

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

In the Matter of: *
*
Public Hearing on *
Interim Rule 01-05401, *
Phytophthora Ramorum *
Quarantine and Regulations. *

Wednesday,
February 27, 2002

Petaluma Community Center
320 N. McDowell
Petaluma, CA

The above-entitled matter came on for
hearing, pursuant to notice at 9:00 a.m.

PRESENT:

MATTHEW RHOADS, Regulatory Analyst,
Regulatory Analysis & Dev., USDA-APHIS
MATTHEW H. ROYER, Assistant Director,
Invasive Species & Pest Management
JONATHAN M. JONES, Natl. Forest Pest Programs
Coordinator, Invasive Species & Pest Management,
Plant Health Programs

SPEAKERS PRESENT:

DON HENRY
MARK STANLEY
JOSEPH GABARINO
KATY FACINO
SUSAN COHEN
KAREN SUSLOW
TED SMALLEY
CHRIS ONO
DON DILLON
STEVEN R. JONES
DON HERZOG
DENNIS MCFADDEN
WILL BAKX
SAM LOPEZ
JOHN WESTOBY

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SPEAKERS PRESENT CONTINUED:

DAVID BENGSTON
CHUCK HELGET
DAN GASSER
MARK FALK
DON MENDEL
HANK SCIARONI
JACK OLSON
BRIAN MATHEWS
EAVEN EDGAR
PHIL AUNE
CAROL UMBARGER
JERRY MELO
STACY CARLSON
JOHN AGUIRRE

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1 P R O C E E D I N G

2 (9:00 A.M.)

3 MR. RHOADS: Good morning and welcome to the
4 Animal and Plant Health Inspection Service's public
5 hearing on its Interim Rule that quarantines 10
6 counties in the State of California and a portion of
7 one county in the State of Oregon, because of the
8 presence of Phytophthora Ramorum, the fungus that
9 causes what has commonly been known as sudden oak
10 death.

11 Can you, guys, hear me all right? No, okay.
12 Let me see if we can get some more volume here.

13 (Pause.)

14 MR. RHOADS: How about I talk like this?
15 Okay.

16 Let me just start over.

17 Good morning, welcome to the Animal and Plant
18 Health Inspection Service's public hearing on its
19 Interim Rule that quarantines 10 counties in the State
20 of California and one portion of one county in the
21 State of Oregon, because of the presence of
22 Phytophthora Ramorum, the fungus that causes what is
23 commonly been known as sudden oak death.

24 Under the Interim Rule we are regulating the
25 interstate movement of articles known to host

1 Phytophthora Ramorum from quarantined areas in
2 California and Oregon.

3 My name is Matt Rhoads and I am a Regulatory
4 Analyst for the U.S. Department of Agriculture's Animal
5 and Plant Health Inspection Service. I will be the
6 presiding officer for today's hearing.

7 Today's hearing in Petaluma is the first of
8 two public hearings that will be held on the Interim
9 Rule. The second hearing is scheduled to be held on
10 March 27 in Riverdale, Maryland. Notice of these
11 public hearings was included in the Interim Rule, which
12 was published in the Federal Register on February 14
13 and which was effected the same day.

14 Copies of the Interim Rule were available on
15 the registration table as were copies of a frequently
16 asked questions document that we have been working on.

17 We intend to update the list of frequently asked
18 questions regularly and updates will be made available
19 on the website which is listed on the second, in the
20 second paragraph of the frequently asked questions
21 document, the first edition. We will try and post
22 updates to that on a fairly regular basis. So, just
23 keep an eye out on our website for those updates.

24 The purpose of today's public hearing is to
25 give interested persons the opportunity for the oral

1 presentation of data, views or arguments on the
2 February 14 Interim Rule. Those persons that are
3 testifying will have the opportunity to ask questions
4 about the Interim Rule. APHIS personnel, we will
5 respond only to clarify the provisions of the Interim
6 Rule. We view this hearing as an opportunity receive
7 public comments and not as an opportunity to debate the
8 merits of the provisions of the rule.

9 At this hearing, any interested party may
10 appear and be heard in person or through an attorney or
11 other representative. Persons who have registered
12 either by email or phone in advance of the hearing or
13 who have registered this morning in person, will be
14 given an opportunity to speak before unregistered
15 persons. After all registered persons have been
16 heard, persons who have not registered will be given an
17 opportunity to speak.

18 As previously noted, today's hearing is
19 scheduled to conclude at 4:30 p.m. Because the people
20 at the Petaluma Community Center would like us to be
21 physically out of the building at five, I may need to
22 limit the time for some of you, for speakers to make
23 sure that all people who want to speak will be
24 accommodated. I don't see that that is going to be a
25 problem today. I think we have about 15 or 20 people

1 who are registered. But, we will take that as it
2 comes.

3 All comments made here today are being
4 recorded and will be transcribed. The court reporter
5 for today's hearing is Mr. George Palmer of Audi-S
6 Corporation. A copy of the hearing transcript will be
7 posted on our website which is, again, is listed on the
8 frequently asked questions, the second paragraph,
9 www.aphis.usda.gov/ppq/ispn/sod. And we hope to have
10 that, the transcript of this hearing posted probably
11 within about two weeks.

12 A copy of the hearing transcript will also be
13 made available for public inspection at the APHIS
14 reading room in Room 1141 of the U.S.D.A. South
15 Building in Washington, D.C. That room is open from
16 8:00 a.m. to 4:30 p.m.

17 As presiding officer, I will announce each
18 registered speaker that has requested to make a
19 statement. Before commencing your remarks please state
20 and spell your last name for the benefit of the court
21 reporter.

22 We have an overhead projector available,
23 should speakers require its use. If you plan to use a
24 computer presentation program such a Power Point to
25 make a presentation, you must provide your own

1 projector and computer.

2 In accordance with the procedures noted in
3 the July 27 notice and also for the benefit of the
4 court reporter, I am requesting that anyone who reads a
5 prepared statement, please provide me with one copy or
6 preferably two copies of your prepared statement at the
7 conclusion of your remarks. If you don't copies that
8 is okay, it is primarily for the benefit of the court
9 reporter to make sure that he can capture everything
10 that you say.

11 Any written as well as oral statements
12 submitted or presented at today's hearing as well as
13 any written comments submitted prior to the close of
14 the comment period, will become part of the public
15 record for the hearing. If you plan to use visual aids
16 during a presentation, please provide me with a copy or
17 your visual aid will not become part of the public
18 hearing record.

19 If an individual's comments do not relate to
20 the stated purpose of the hearing, which is, again, is
21 to present comments on our Interim Rule regarding
22 Phytophthora Ramorum, it may be necessary for me to ask
23 that the speaker focus his or her comments accordingly.

24 I would like to remind everyone that the
25 close of the comment period for the submitting comments

1 on the Interim Rule is April 15, 2002. Any comments in
2 addition to those presented at today's hearing, may be
3 submitted via postal mail, at the address listed on the
4 first page of the Interim Rule. It is in the, at the
5 bottom of the first column, the address for postal
6 submissions. You also may submit comments via the
7 Worldwide Web. This will be the first time that APHIS
8 is accepting comments on a rule via a new electronic
9 comments system that we have developed with the
10 Department of Transportation. By visiting the web
11 page for this, which is listed also the very bottom of
12 the first column of Interim Rule, www., or actually it
13 is not www., it is comments.aphis.usda.gov. By
14 visiting that site, you will be able to submit
15 comments, review your comments, and look at the
16 comments of other people who have already submitted
17 comments prior to your submission.

18 The web site will include comments submitted
19 by postal mail, which will be scanned into electronic
20 format and posted along side other electronically
21 submitted comments. The system provides venue for
22 persons to submit comments not only on the Interim Rule
23 but on other people's comments on the Interim Rule.
24 We hope that this will provide a reasonable opportunity
25 for a minor dialogue on the provisions of the rule.

1 We hope you find the system helpful. Please bear with
2 us, as I said, it is the first time we are using this
3 system. So, if you see any problems with it, please
4 follow the links on the site and give us some feedback.

5 We are looking for all the feedback we can get.

6 Before concluding my remarks, I would like to
7 introduce the person seated beside me, the first person
8 I would like to introduce is Mr. Jonathan Jones, who is
9 the program manager for the Phytophthora Ramorum
10 program. Mr. Jones will provide an overview of the
11 provisions of the Interim Rule and will be available to
12 answer questions, should you have any regarding the
13 rule.

14 Adjacent to Mr. Jones is Dr. Matthew Royer, assistant
15 director for Invasive Species and Pest Management of
16 APHIS Plant Protection and Quarantine. Dr. Royer will
17 also be available to answer questions, any questions
18 you have regarding the rule.

19 After the presentation made by Mr. Jones, I
20 will call the first registered speaker.

21 Jonathan.

22 PRESENTATION BY JONATHAN JONES:

23 MR. JONES: Good morning. Let's see how the
24 sound works up here. I will move a little closer.

25 Good morning. Thanks for letting me be here

1 with you and thanks for coming today and showing your
2 interest in this regulation.

3 My name is Jonathan Jones. I am National
4 Forest Pest Programs Manager and specifically Program
5 Manager for Phytophthora Ramorum for APHIS at our
6 headquarters in Riverdale.

7 What I would like to show you briefly here is
8 a Power Point presentation on what are the new Federal
9 Regulations for Phytophthora Ramorum, cover those
10 briefly, but not in specific details. You may have
11 specific questions about application of those rules
12 afterwards. Okay.

13 A little bit of background. The regulation
14 was published as Interim Rule February 14 of this year
15 as an Interim Rule. It did go into effect upon
16 publication. That is opposed to proposed rules, which
17 have a comment period and then after we publish its
18 final rules before they go into effect. There is
19 sometimes some confusion on that, and that is why I am
20 providing a little clarification.

21 We do have a 60 day comment period on this,
22 in which you make written comments, the details are in
23 the rule. And as Matt mentioned earlier, there are
24 two public hearings scheduled, the one here, and the
25 one a month later in Riverdale, Maryland. So, if you

1 want to come again, you are welcome to join us in a
2 month in Riverdale. Okay.

3 A little bit of overview. The states, the
4 states can impose their own Phytophthora Ramorum
5 regulations, but cannot be more restrictive than the
6 Federal Rule. There were some states, I understand,
7 posed to do that. We are waiting to see if we did
8 this, before they did, I am not at this point expecting
9 that is going to happen, but they can do that. But,
10 they cannot be more restrictive than what we have in
11 place.

12 States with regulated areas under the Federal
13 Quarantine, such as California, and Oregon, must have
14 regulations in place that are consistent with the
15 Federal Regulation. Regulations proposed from the
16 Netherlands and Germany are a separate rulemaking
17 effort and are not really a topic for conversation
18 here. It is not something we can address or, and it is
19 not my program, but I will pass onto you that we are
20 aware of that issue. It is being addressed. We have
21 notified the countries that we are taking action on
22 their imports as well because the disease has been
23 detected over there. Okay.

24 The regulation regulates 10 California
25 counties. The list is there and part of one Oregon

1 county, which is Kern County.

2 All right. Regulates 15 natural hosts, 14
3 species, one genist rhododendron. I am not going to
4 read through the list, but I provided a list here to,
5 for you.

6 Okay. Okay. Interim Rule has written
7 flexibility to allow an official to take immediate
8 action if deemed necessary and allows APHIS to regulate
9 new areas and new hosts and associated articles with
10 written notice to be followed with the rulemaking. I
11 put this, it is a mouth full and what we are saying is,
12 if we learn tomorrow that something else needs to be
13 regulated, we have authority, via the regulation to do
14 that in a certain manner. If an official determines
15 that an item needs to be regulated because it presents
16 a risk, they have the authority in the regulation to do
17 that. And that is, you know, some discretion there
18 with the officer, some notification on us, if we want
19 to actually say, State of California, we are now
20 regulating, a new host has come to our attention.
21 Okay.

22 Specifics. Wood. Host wood must be
23 debarked, firewood, logs, lumber, etc., and certified
24 as such before moving interstate. Host bark, and host
25 mulch is prohibited movement. It can be moved if it is

1 going for research under special departmental permit.
2 But, for commercial purposes, it is prohibited
3 movement.

4 Forest stock is a term you may not be
5 familiar with. It includes hosts growing in the wild
6 and yards, other non nursery situations. That is
7 prohibited movement. It includes all host plants and
8 plant part grown outside of the nursery situation.

9 Greenery, wreaths and garlands. Host
10 greenery, wreaths and garlands are as well prohibited
11 unless they can be and are dipped into hot water at 160
12 degree Fahrenheit for one hour and are certified as
13 such, then they can move.

14 Soil. Soil is all medium except liquid that
15 can support plant life and it must be free of Aduff®
16 and so certified to move, if it is going to move. Duff
17 is defined as the plant matter that includes leaf
18 litter, green waste, stem material, bark and any other
19 plant material that is not decomposed into soil.

20 Further, any soil that has been in contact
21 with a known affected host cannot be certified for
22 movement unless heat treated, pasteurized at 180 degree
23 Fahrenheit for 30 minutes. And that would be, that
24 would be under the supervision of an inspector and that
25 would have to be heated through, not just exposed

1 amount of soil to that degree, but make sure it is all
2 thoroughly heated to that temperature for that time.

3 Nursery stock. Host plants in nurseries are
4 to be inspected and tested annually. It requires a
5 minimum of 100 plants to be inspected and an additional
6 two percent of any plants in the nursery that are hosts
7 to be inspected. And the minimum of 40 samples to be
8 taken and tested for presence of Phytophthora Ramorum.

9 Further, each shipment must be inspected
10 prior to shipment in the minimum, at a minimum of 100
11 plants plus two percent and plants and the shipments
12 are subject to testing if symptoms are observed and
13 must be certified free of Phytophthora Ramorum prior to
14 movement. Further if testing is required, no host can
15 be shipped until negative results are returned.

16 Lastly, if nurseries are found to be
17 infested, they will not be issued certificates for
18 shipping host materials until determined free of
19 Phytophthora Ramorum.

20 Okay. Public comment. If you have looked at
21 the regulation, you may have seen this in there. I
22 have taken pretty much, pulled this right out of the
23 regulation. Much is unknown about Phytophthora
24 Ramorum. In this rule, APHIS has endeavored to
25 regulate the movement of articles that can cause

1 Phytophthora Ramorum to spread on affected areas based
2 on the best scientific evidence available to us at this
3 time. We do invite the public to submit by, in
4 writing, by 15 April, any scientific information that
5 is relevant to its regulatory strategy, including the
6 following six issues.

7 Number one, evidence that contaminated soil
8 provides a viable or likely pathway for the spread of
9 or infection of natural host by Phytophthora Ramorum.

10 Two, evidence demonstrating debarked wood
11 provides a viable or likely pathway for the spread of
12 or infection of natural host by Phytophthora Ramorum.

13 Three, evidence that acorns, seeds or fruits
14 of host plants that are naturally infected by
15 Phytophthora Ramorum, or carry Phytophthora Ramorum,
16 and that acorns, seeds or fruits of host plants provide
17 viable or likely pathway for the spread of or infection
18 of natural host by Phytophthora Ramorum.

19 Why don you wait a minute, Max, that is a
20 long one. Let them read through it a second time.

21 (Pause.)

22 MR. JONES: Okay.

23 Four, comments on the inspection requirements
24 for nurseries, including comments providing a
25 scientific bases for a long or short inspection cycle

1 or an alternative sampling protocol.

2 Five, evidence that certain treatments are
3 effective in eliminating Phytophthora Ramorum infection
4 and regulated articles. We recognize that we don't
5 have many treatments written into the regulation. We
6 would love to expand those sections of the regulation
7 to include more treatments, alternate treatments,
8 treatments for articles. If folks out there have any
9 information to be useful to us, and would enable us to
10 consider that and possibly add that in the future, we
11 certainly would like that information and welcome it.

12 Six, data related to the accuracies,
13 specificity, ease of use and cost effectiveness of
14 tests that can be used to detect Phytophthora Ramorum
15 on nursery stock of host plants. As many of you are
16 aware, there is, finding good tools, identifying good
17 tools, reliable tools, consistent tools, is a
18 challenge, will continue to be, and we are looking for
19 ways to do that and do it well, do it effectively.

20 Okay. Thank you.

21 That is what I wanted to present. It is an
22 overview. There is a lot of details. There is more
23 detail covered in the frequently asked questions, much,
24 much more detailed covered in the regulations. Since
25 you are here, you probably have at least had a chance

1 to look at the regulations or have some questions that
2 are more detailed than what I could provide here.

3 So, with that.

4 (Pause.)

5 MR. RHOADS: Okay. With that I will call the
6 first registered speaker, first in line is Don Henry,
7 the Director, CDFA. Mr. Henry.

8 PRESENTATION BY DON HENRY

9 MR. HENRY: Okay. For the record, my name is
10 Don Henry, H-E-N-R-Y.

11 Good morning, my name is Don Henry. I am the
12 director of Plant Health and Pest Prevention Services
13 Division for the California Department of Food and
14 Agriculture.

15 I would like to thank the USDA, APHIS, PPQ
16 staff for traveling to California today, to allow us to
17 take the opportunity to provide comment on the new
18 Federal Sudden Oak Death Regulation.

19 When sudden oak death was first found in
20 California, our decision to adopt regulations at the
21 state level was based upon a commitment by the USDA to
22 do the following:

23 First, a comparable regulation at the Federal
24 level would be enacted. Second, the commitment to
25 conduct a national survey and third, the harmonization

1 of the Federal Foreign Regulation, with the Federal
2 Domestic Regulation. And I realize that we have an
3 organizational separation between the federal and
4 domestic or the Federal Domestic and the Federal
5 Foreign, but, I think that is a policy issue within the
6 USDA that cannot be ignored or not addressed.

7 California is committed to effective
8 regulation that is founded on the need and is
9 reasonable as well as enforceable. In this case, the
10 need for regulation to focus on preventing the
11 artificial movement of the disease through restricting
12 the movement of infected plant material versus the
13 movement of materials that may be contaminated with
14 spores of the causal organism *Phytophthora Ramorum*. In
15 other words, regulate the disease but don't regulate
16 the organism.

17 The need for practical as well as effective
18 methods for certification and in addition the need for
19 effective regulation of foreign imports of host
20 materials to ensure that no new introductions occur.
21 To that end we appreciate that the USDA followed
22 through on its work to promulgate these regulations and
23 would like to offer the following thoughts on the
24 regulations themselves.

25 One of the continuing dilemmas with this

1 disease is the lack of scientific data as to its
2 biology and to its distribution. It is critical that a
3 national survey be conducted this year to detect and
4 delimitate the infestation to determine where and when
5 regulation is needed. In California we will continue
6 to delimitate activities or delimitate activities
7 throughout the state, starting by the end of February,
8 we will initiate a statewide inspection of all
9 nurseries in California that either grow or ship any of
10 the regulated products. And we will continue to work
11 with U.S. Forest Service, California Department of
12 Forestry to work on a statewide survey of range land
13 and forest lands.

14 We believe the regulation of soil as found
15 within the Federal Sudden Oak Death Regulation, should
16 be modified. California has specifically not
17 regulated the movement of soil because we do not
18 believe that the pest risk warrants these regulatory
19 restrictions. Minimally, we request that the Federal
20 Regulations narrow the definition of soil for the
21 purposes of this regulation and make provisions for the
22 inclusion of approved growing medium as found within
23 Federal Foreign Nursery Stock Quarantine 7 CFR 13.7.
24 Compliance agreements have been used in California to
25 regulate the movement of sudden oak death and our

1 experience has shown that this is an effective
2 regulatory tool. We believe that this tool should be
3 available to nurseries to facilitate shipments under
4 the Federal Regulation as well. Where nurseries choose
5 not to use compliance agreements, we believe that the
6 14 day minimum notification period is unnecessarily
7 long and should be replaced with a more reasonable one
8 that still takes into consideration the availability of
9 federal, state or local inspectors.

10 Inspection certification should be available
11 for all regulated articles, not just nursery stock.
12 And this is probably one of the most important points
13 that I will make today and I would like emphasize that.

14 Inspections should be focused on preventing
15 the artificial movement of disease. As such, sampling
16 an inspection should focus on detection of plants and
17 plant materials that are symptomatic. Samples should
18 not be required simply to fulfil an arbitrary quota of
19 40 samples.

20 Duff, and that is a term the USDA uses in
21 quite a few of its quarantines, if regulated should be
22 clearly designated as that duff originating from known
23 host material only. Bark chips forest stock, mulch
24 should be designated as regulated rather than
25 restricted articles to provide regulatory flexibility

1 as effective mitigation tools become available in the
2 future.

3 Requirements for green waste and bile mass
4 must not be in conflict with environmental or waste
5 management laws and regulations that are already on the
6 books within the State of California.

7 Finally, in order to prevent this type of
8 pest outbreak from occurring in the future, we strongly
9 request that the Federal Foreign Regulation be revised
10 to prohibit the entry of host of Phytophthora Ramorum
11 unless they meet the same requirements found within the
12 Federal Domestic Regulation. And I realize that there
13 is a separation here today between those two issues.

14 Once again I would like to thank you for
15 coming here today. We will be submitting a much more
16 detailed written comment to your office prior to the
17 April 15 deadline. Thank you very much.

18 MR. RHOADS: Next speak will be Mark Stanley,
19 Assistant Deputy Director of the California Department
20 on Forestry.

21 PRESENTATION BY MARK STANLEY:

22 MR. STANLEY: Good morning. My name is Mark
23 Stanley, S-T-A-N-L-E-Y. I am the Assistant Deputy
24 Director of the Department of Forestry and Fire
25 Protection. I am also the chair of the California

1 Morality Task Force. This morning I will be speaking
2 from the point of the view from the Department of
3 Forestry and specifically as it relates to the forestry
4 operations that the regulation will impact.

5 We also submit in detail writing later, since
6 we haven't had the opportunity or the time to really
7 digest the regulations.

8 CDF is responsible for regulating timber
9 harvest operations on all non federal lands in
10 California. And we also manage two state forests in
11 the regulated area. So, we kind of wear two hats here.
12 One of the regulator and one of the regulated.

13 Let me briefly explain some of the
14 enforcement and implementation difficulties that we see
15 with the regulation as we read it and as verbal
16 clarification that we received so far and again,
17 specifically as it relates to forestry operations.

18 We are pleased that APHIS has finally taken
19 some action to try to reduce or minimize the spread. I
20 was in Riverdale a year and a half ago when we first
21 started discussing this, and presented at that point in
22 time some of the possible economic impacts that would
23 occur if soil was regulated. And I will get to that in
24 a little bit later.

25 It appears though that the regulations were

1 done at somewhat of a vacuum maybe, at least as it
2 relates to forestry in Riverdale. Because to my
3 knowledge, there has been no input from any forestry
4 officials or forestry operations, at least on the West
5 Coast, as kind of evidenced by the regs.

6 As you mentioned this morning, 10 counties in
7 California are regulated by the Federal Regulation, but
8 also the regulation states that California will have to
9 enact the same regulation on an intrastate level. So,
10 in effect, you are creating the same regulation in the
11 state. And so, I will address that as though those
12 regulations are in place.

13 Once those regulations are in place or
14 enacted in California, then CDF has the responsibility
15 of implementing those because we have a zone
16 infestation declared by the Board of Forestry on any
17 commercial harvested operations in California and
18 registered professional foresters preparing those plans
19 have to address how they are going to mitigate and
20 comply with the regulations.

21 I am really unclear on the economic side of
22 the regulation as to the finding for no significant
23 economic impact because of the regulations. Because
24 the Federal Regulation does force the state to comply
25 with the same ones and there is potentially some

1 significant economic impacts. The regulation discusses
2 regulated versus restricted articles. The regulate can
3 move with some kind of a compliance agreement. And on
4 the surface this seems fine. Nursery stock and
5 nurseries can be inspected, be found free from,
6 shipments can be inspected and moved out. On the
7 forestry side, however, whether it be fire wood or
8 logs, that is not an option. You have to remove the
9 bark. This is neither practical or feasible because
10 you can't move the debarking operations to the field.
11 In most, in many of those debarking operations at a
12 sawmill are maybe outside of the regulated area.

13 The logic is somewhat lost on me of how you
14 can do a free from survey in effect on a nursery, a
15 geographic entity, and then inspect the shipment, but
16 you can't do that for other regulated hosts. So I am
17 kind of confused as to the logic process there.

18 The same thing occurs obviously with fire
19 wood, where you can't move the material outside of the
20 regulated area or intrastate. The CDF standpoint and I
21 am sure state parks, National Forest Service has the
22 same issue, we on the state forests issue about 600
23 woodcutting permits, both commercial and residential
24 use, which generates around \$20,000.00 in revenue to
25 us. I asked the specific question last week or when the

1 regulation came out, as to what we would be required to
2 do. Would we be required to notify and educate
3 permittees that they couldn't remove the material from
4 the regulated counties or we would have to prohibit
5 that cutting because we can't control it once it leaves
6 our property. I am still waiting for the answer.

7 Soil is probably one of the biggest impacts.

8 On February 11 I contacted official, APHIS officials
9 in Riverdale and asked specifically whether soil on
10 forestry vehicles, forestry equipment would be
11 regulated because this has been a point of concern,
12 discussion on the Task Force in California for two
13 years or so. I was told that there would be no
14 regulation of soil that was on forestry equipment. On
15 February 14, three days later when the regulation was
16 released, I again wanted to confirm that, that finding
17 and was told at that point in time that soil on
18 forestry equipment would be regulated and it was the
19 only equipment that would be regulated. That it would
20 require some kind of a wash down. So, I am again
21 confused because I don't think the pathogen knows a
22 piece of forestry equipment from a piece of
23 construction equipment, vehicular traffic, recreation
24 equipment. If the Federal Regulation as it relates to
25 soil is truly intended to minimize the interstate

1 spread of the pathogen and obviously from what I have
2 been told, the perceived risk from forestry equipment
3 is greater than anything else, I think the analysis may
4 be flawed. I would, I would submit that the risk of
5 soil movement from infected areas interstate is
6 significantly greater from the recreational traffic of
7 the thousand of visitors hiking and biking on Muir
8 Woods, Golden Gate National Recreational Area and those
9 things moving out of state than they are from forestry
10 equipment that stays in the same geographic areas.

11 As it comes to the economics again, the
12 economics of washing vehicles on forestry operations is
13 relatively infeasible, expensive, time consuming. I am
14 not quite sure how you will enforce that, get that
15 compliance. It also doesn't address where the water
16 will come from that you will use for washing. Your
17 regulation or in the regulation it specifically says
18 that soil, water and plant hosts have been found to
19 spread the pathogen from available research. I am
20 confused because if this is based on available
21 research, we just heard you wanted comments on six
22 items specifically that is requesting evidence to
23 support the regulation you already put in place. So, I
24 am confused as to what the regulation, what kind of
25 science the regulation was based on.

1 State regulations that are currently in place
2 or that were in place prior to you releasing the
3 Federal Regulation prohibited the movement of host
4 material within the area also. As we saw a greater
5 risk or and the intent of the state regulation was to
6 minimize the spread not only outside of the geographic
7 or political boundary of the county, but also to try to
8 restrict the spread within the county, to minimize that
9 spread. And it appears that at the state, at the
10 federal level that is not a concern.

11 I would hope that you would consider or as
12 you reconsider these regulations, that you take
13 advantage of not only the expertise of the state and
14 federal agencies in California that have been working
15 on this issue for, since 1994 in some cases, when this
16 first was discovered but not identified, and also
17 utilize the expertise of the members of the California
18 Morality Task Force that had been working on this. The
19 Morality Task Force is made up of about 65 different
20 entities and about 800 people. They are the people
21 that have been working on this issue from the
22 beginning. And to my knowledge, for the most part
23 those people have not been contacted.

24 Thank you again for the opportunity to share
25 our concerns and I look forward to the answers and some

1 of your explanations for our concerns and questions.

2 Thank you.

3 MR. RHOADS: Thank you.

4 Next we will call Joseph J. Garbarino, of the
5 Marin Recycling and Marin Sanitary Service.

6 PRESENTATION BY JOSEPH GARBARINO:

7 MR. GARBARINO: Thank you very much for this
8 opportunity to speak before you. I am a small business
9 man in Marin County. I operate a garbage collection
10 company and a recycling company. And I also operate an
11 indoor dump, a murp. That is three football fields
12 under one roof and in that building we are recycling 72
13 percent of the material that comes in.

14 After hearing all these discussions and all
15 the rules and regulations that are coming down the
16 road, I look at myself more as a mortician, operating a
17 mortuary. We have got a lot of dead plants, dead trees
18 and what do you do with these items when they come in.

19 I think I have a solution for you and I would invite
20 all of you to come down and see my plant as to what I
21 do. When this dead material comes in, whether it is
22 diseased or not, I have no way of knowing. Some of it
23 comes in in chip form, some of it comes in in trees,
24 but it does come in. And we lay it on the concrete
25 floor and it goes from eight in the morning until 4:30

1 in the afternoon. After that, starting at 4:30 in the
2 evening, we grind this material and we grind
3 approximately 200 tons a day. It is nine semis that go
4 out of Marin County to a power plant. So, starting at
5 midnight, and on down through eight o'clock in the
6 morning, nine semis go out and close to a power plant
7 where this material is incinerated.

8 So, before we go into too many new rules
9 and regulations, we have a problem. And I think we
10 have a solution at our place and I would like you to
11 see it as a solution to this problem. Once you burn a
12 cancer or you bury it, you have gotten rid of that
13 problem. Somehow, someday, you can't leave this
14 material like some people want to, leave it out in the
15 field to die. You have got to gather this material,
16 collect it, and do something with it. And what you do
17 now, you should do something that is positive. And to
18 me I am not a scientist, but there is nothing more
19 positive than to get it, and close it, contain it, and
20 then ship where it could be burned into I don't know
21 how many degrees Fahrenheit and it could be used at
22 least one more time as a power unit.

23 I don't have too much to say. I am also in
24 the compost business because we shake out all the
25 sawdust, that all comes out. And it is a serious

1 problem. People are talking that possibly 50 percent
2 of our trees in Marin County are going to die. I have
3 worked with my Agricultural inspector in Marin County
4 and trying to solve some problems. They have looked at
5 it. They like my idea. And I hope you folks take the
6 time to come down and see what a possible solution is
7 for this problem that we have and that we are facing.

8 And my last name is Garbarino,
9 G-A-R-B-A-R-I-N-O. Thank you for allowing me to give
10 you these comments.

11 MR. RHOADS: Thank you, Mr. Garbarino.

12 Next we have Katy Facino. Is that correct?

13 PRESENTATION BY KATY FACINO:

14 MS. FACINO: Good morning. I am Katy Facino.
15 That is F like Frank, A-C-I-N-O.

16 Okay. I am the public information officer for
17 the California Oak Morality Task Force. After looking
18 over the new regulations, it is clear that they heavily
19 rely on voluntary compliance. And given that fact,
20 education will be a key component. The Task Force
21 being made up of over 65 agencies and 800 members,
22 includes leading scientists, professional foresters,
23 educators, utility companies, government entities,
24 public and private land owners, non profit
25 organizations and private foundations. For the past

1 year and a half we have been the primary contact for
2 information on sudden oak death.

3 People from California, the United States and
4 the rest of the world look to us for answers and
5 updates on latest research, regulations and general
6 information on sudden oak death. For these reasons I
7 believe the Task Force will prove to be a valuable
8 asset in disseminating federal information. I ask that
9 you use us as a tremendous resource that we are, and
10 that you join the Task Force and the many groups that
11 already belong to this cooperative effort in the fight
12 against sudden oak death. And that is it. Thanks.

13 MR. RHOADS: Thank you. Okay. Next we have
14 Susan Cohen, the Agriculture Commissioner for Solano
15 County.

16 PRESENTATION BY SUSAN COHEN:

17 MS. COHEN: Good morning. Which microphone
18 is working? Oh, okay.

19 Good morning, I am Susan Cohen. I am Solano
20 County Agriculture Commissioner. I don't have much
21 voice, so that is why I wanted to get to close to the
22 microphone. My last name is C-O-H-E-N.

23 I am glad to be here to be able to present
24 some verbal comments but due to the time frames in
25 which this regulation was proposed, Solano County and I

1 am sure other counties in California will have to
2 submit comments in writing after today's hearing before
3 the deadline, of course.

4 Two questions on the Federal Register
5 document that I would like to raise. Under the words
6 Aimpact of the Interim Rule@, it says AUnder the Interim
7 Rule nursery stock moving interstate from the
8 quarantine area must be accompanied by a certificate,
9 etc., etc.@ It does not say regulated nursery stock.

10 If it meant to say that, it should be clarified. It
11 says under the Interim Rule nursery stock moving
12 interstate from the quarantine area must be regulated,
13 excuse me, must be accompanied by a certificate. So,
14 my question is, is that typographical error and if so,
15 if that could be clarified.

16 MR. RHOADS: We can clarify that for the next
17 iteration. What we are, what we are --

18 MS. COHEN: I would like the audience to be
19 able to hear you.

20 MR. RHOADS: Okay. I am sorry, we can clarify
21 that for the follow up document for this, what we are
22 talking is regulated articles. Nursery stock that is
23 regulated under this rule, which involves only, what,
24 15 --

25 MS. COHEN: I don't know if the audience can

1 hear you, but I would like to repeat what I heard, if
2 it is okay, or go ahead, it would be better if you said
3 it.

4 MR. RHOADS: What we are talking about here is
5 specifically the regulated articles. We are not
6 talking about all nursery stock. We are just dealing
7 specifically with the 15, 15 genera species, 14, plus
8 one, that would be affected under this rule.

9 MS. COHEN: Okay. My other comment is Section
10 301.92-11. It is on page 6837 of the Federal Register.

11 Letter A talks about annual nursery inspection and
12 sampling and number one, under letter A, talks about if
13 the nursery contains 100 or fewer regulated articles
14 and then it goes on to describe the inspection
15 procedures. What it does not say is if what, what if
16 the nursery has zero regulated articles. I am not
17 trying to be clever. It is just something that we
18 noted, we are the doers, we are the people on the
19 ground who perform the work to keep interstate and
20 intrastate commerce going. Maybe you could clarify
21 that right now, if that is possible, like you did the
22 other one.

23 MR. JONES: If the nursery contains no host
24 material, no regulated plants, they do not require an
25 annual inspection for testing. Is that clear?

1 MS. COHEN: If the nursery contains, I want to
2 repeat what I heard. I am a little hard of hearing
3 today.

4 MR. JONES: Go ahead.

5 MS. COHEN: If the nursery contains no
6 regulated articles, then what did you say?

7 MR. JONES: If the nursery contains no
8 regulated articles, that is no host material, no host
9 plants, it doesn't grow and it doesn't produce, doesn't
10 have them, they do not require an annual inspection.

11 MS. COHEN: Then that nursery does not require
12 annual inspection, correct?

13 MR. JONES: Correct.

14 MS. COHEN: Okay. This sampling procedure here
15 doesn't make that clear, so maybe that is, again --

16 MR. JONES: We will look at that, thank you.

17 MS. COHEN: Yes. Thank you.

18 As I said at the beginning of my remarks, we
19 will submit comments in writing. We have some concerns
20 about the, I guess, you could say unequal, imbalance in
21 the economics of, particularly of the nursery industry
22 for this nationwide. When you are in a county such as
23 Solano County that has three and maybe we have five and
24 maybe we have 25 positive finds, quite a distance from
25 the nursery, it does seem to provide a regulatory

1 challenge, a work load, an unfunded work load that is
2 not commensurate with the actual pest risk.

3 Thank you very much.

4 MR. RHOADS: Thank you.

5 Next we are going to have Karen Suslow.

6 PRESENTATION BY KAREN SUSLOW:

7 MS. SUSLOW: Good morning. Thank you for the
8 opportunity to ask you some questions pertaining to the
9 Federal Register.

10 My name is Karen Suslow. It is S-U-S-L-O-W.

11 I am production manager at Heinz Nurseries, a
12 wholesale nursery that is located in Solano County, a
13 regulated county.

14 I had a couple of, just a few questions
15 pertaining to the Federal Register and also a comment
16 that Dr. Jones just made to the Ag Commissioner in
17 Solano County.

18 Dr. Jones, when you said that, in our
19 particular case, at our nursery, we grow the crops, no
20 regulated crops are grown at our nursery. We ship
21 everything to the East Coast and Midwest, so we don't
22 have California crops. And you made a comment just now
23 that if you have no regulated crops, then there is no
24 annual inspection needed. Is that correct for an
25 infested county, but a free from nursery?

1 MR. JONES: I get the feeling I am missing
2 something in the question. The obvious answer to me
3 seems to be that is correct. Is there, is there a
4 reason why you think it is not correct?

5 MS. SUSLOW: Well, because I guess there is
6 some question pertaining to this information sheet that
7 I received at the front door. It says Cooperative Oak
8 Morality Disease Project Compliance Agreement. That
9 is, was submitted, I guess for each of the counties
10 when they had their training just recently with regards
11 to how to inspect for Phytophthora Ramorum. And in it
12 on the last page, it identifies nurseries that have
13 host plants, nurseries with both host and non host
14 plants and then nurseries dealing only with non host
15 plants, where we fall in that category.

16 MR. JONES: Okay. Okay. Now, I understand the
17 question and I think I can clarify it.

18 Can you all hear me through this mike okay?

19 All right.

20 (Pause.)

21 MR. JONES: Thank you. Oh, that is better. I
22 don't have to lean into quite so far. What is going
23 on, and I see the confusion now. Thanks for clarifying
24 what the question, the question the way I can relate it
25 to better. There are two things going on with

1 nurseries and one is the host nursery stock, the other
2 is the medium in which it is grown. So, we are
3 regulating in the regulated areas plants which are 15
4 hosts, and then growing medium or soil, wherever it
5 occurs in the county. So, if you are a nursery and
6 maybe we need to go back to Susie Cohen on this, maybe
7 this was the question she was asking and I didn't
8 answer it clearly, because I didn't understand it, if
9 you are a nursery that grows host material, if you are
10 nursery that has host material then you do require an
11 annual inspection and testing. If you are a nursery
12 that grows no host material, but you move plants that
13 are host in medium, that, those shipments have to be
14 certified free of duff, the overbearing layer of plant,
15 of plant waste.

16 That is separate and different from the
17 nursery inspection. You don't require an annual
18 inspection for that. You require a certification or
19 testing for that but it is a regulation and is part of
20 the regulations. So, nurseries are regulated if they
21 ship material interstate in medium. And it doesn't
22 matter if it is host or non host.

23 MS. SUSLOW: Okay.

24 MR. JONES: Does that --

25 MS. SUSLOW: That does clarify it. So, it

1 would be correct in this, this draft saying that it, it
2 says if host material is being grown on premises, if
3 non host material is being grown on premises, the
4 county will issue a compliance agreement and a PPQ
5 yellow stickers to attach to the shipping paperwork,
6 correct?

7 MR. JONES: It is correct in that there are
8 requirements for shipment of plants in medium, yes.

9 MS. SUSLOW: Right. With regards to the duff,
10 so, clarifying what you just said, been quite apparent,
11 that the duff does have to be removed from non host
12 plants being shipped out of state. Okay.

13 MR. JONES: I am sorry, I am missed what your
14 last point was.

15 MS. SUSLOW: I was just saying that duff does
16 have to be removed from non host plants that are
17 shipped out of state.

18 MR. JONES: Yes, that is correct.

19 MS. SUSLOW: Okay. A second question I had
20 was is there going to be a point or is it not going to
21 follow the same lines like the glass sharpshooter and
22 Pearson disease which is where you have counties that
23 are infested, but you have free from areas within
24 counties, that have been inspected and are free from
25 within a certain area?

1 MR. JONES: We haven't set up the regulations
2 or the procedures to recognize free areas with this
3 iteration, but we would be interested in hearing
4 comments on how that might be done.

5 MS. SUSLOW: Thank you very much.

6 MR. RHOADS: Thank you.

7 Next we are going to have Ted Smalley.

8 PRESENTATION BY TED SMALLEY:

9 MR. SMALLEY: Good morning. I am Ted Smalley,
10 general manager of Calico Hardwoods, Incorporated. And
11 my question this morning regards the movement of wood
12 products from non infected counties through quarantine
13 counties and to the ports and the docks in Oakland.

14 Is that material going to have to be debarked
15 to move through the quarantined counties?

16 MR. SMITH: That is the first time we have
17 gotten this question, so give me a moment. It is
18 covered in here, I think you are okay. Let me find the
19 right section and refer you to it and then I will read
20 from it.

21 (Pause.)

22 MR. SMITH: It is, and this pertains to
23 interstate movement and you are talking about moving
24 within the state, but the federal regulation says about
25 moving through a regulated area interstate, which is

1 what I presume you are asking about or what I can
2 respond to.

3 It is under 301.92-4. That is the section
4 with conditions governing the intrastate movement of
5 regulated, regulated and restricted articles from
6 quarantine areas.

7 MR. RHOADS: Page 6835 at the bottom. Bottom
8 of the third column.

9 MR. SMALLEY: Thank you.

10 MR. SMITH: And let me get you through the
11 hierarchy and the structure here. It is not A, it is
12 B, without a certificate or departmental permit. And
13 then one, and two there, I think, yeah, and that will
14 cover it. And what it says is the regulated or
15 restricted article originated outside the quarantine
16 area and the point of origin is indicated on the weigh
17 bill of the vehicle transporting the article. Okay.
18 And two, the regulated or restricted article is moved
19 from outside the quarantine area through the
20 quarantined area without stopping except for refueling
21 or traffic conditions, such as traffic lights or stop
22 signs and the article is not unpacked or unloaded in
23 the quarantined area.

24 MR. SMALLEY: Okay.

25 MR. SMITH: Now you are at a port inside the

1 regulated area. I think is what you asked, right?

2 MR. SMALLEY: Okay. And one other question I
3 would like clarified.

4 Is there any requirements for containment of
5 this material while it is being transported through
6 these counties?

7 MR. RHOADS: Not beyond what we just said,
8 just that it needs to be moved pretty much expediently
9 and expeditiously through the area. You don't want to
10 let, you know, unload it or have it stay in the area
11 for an undue amount of time.

12 MR. SMALLEY: Okay. Thank you very much.

13 MR. RHOADS: Otherwise no other restrictions
14 and no certificate is required, no inspection or
15 anything, you are free to move it through.

16 MR. SMALLEY: Thank you.

17 MR. RHOADS: Okay. Next I am going to call
18 some people who have pre registered but I am not sure
19 if they are here at this point.

20 Don Mendel, General Counsel for the
21 Nurserymen's Exchange, from Half Moon Bay? Is Mr.
22 Mendel here? No.

23 Mark Falk also from the Nurserymen's
24 Exchange, Half Moon Bay? No.

25 Hank Sciaroni, Nurserymen's Exchange? No.

1 Okay. Is Mr. Jack Olson from the California
2 Farm Bureau Federation here?

3 Then is Christopher Ono, President of the
4 California Association of Nurserymen.

5 PRESENTATION BY CHRISTOPHER ONO:

6 MR. ONO: My name is Chris Ono, last name is
7 spelled O-N-O. And I am the president of the
8 California Association of Nurserymen. The California
9 Association of Nurserymen represents nurseries both
10 retail and wholesale in the State of California.

11 The nursery industry generates 2.7 billion
12 dollars in revenue in the State of California. It is
13 the third largest agriculture crop and it is the second
14 largest speciality crop in California.

15 Currently 10 counties are under quarantine
16 for sudden oak death. This affects over 480 licensed
17 nurseries. We would like to see the 10 counties
18 delimited. We believe with the 10 counties delimited
19 there will be better control of Phytophthora Ramorum
20 from spreading. Currently the regulations allow free
21 movement of regulated articles within and among the 10
22 counties. Some counties only have one or two areas
23 that are affected with Phytophthora Ramorum. Some of
24 these areas are in remote and isolated areas. In 1997
25 with Red Imported Fire Ant it was assumed that all of

1 Orange County was infested, but through further surveys
2 it was discovered that only north and the southern
3 portion of Orange County were actually infested. And
4 now the nurseries that are under the Red Imported Fire
5 Ant quarantine cannot get themselves out of that
6 quarantine.

7 By monitoring and regulating the known areas
8 of Phytophthora Ramorum more closely, this will allow
9 better controls of sudden oak death and utilize our
10 resources more effectively. By regulating the entire
11 counties, sudden oak death has a potential of spreading
12 further and our resources would be diluted.

13 We also believe that adequate funding should
14 be provided for California to allow timely and quality
15 inspections. Inspections that regulate plant material
16 should be done by qualified individuals with the
17 skilled symptoms of Phytophthora Ramorum. This will
18 limit false positives.

19 The inspections should be available within 24
20 to 48 hour notice. The cost of these inspection
21 should not come from industry.

22 Moving onto nursery compliance agreements.
23 In Section 301.92-6, compliance agreements and
24 cancellation. It states that a compliance agreement
25 will be issued when an inspector has determined that

1 the person requesting a compliance agreement is
2 knowledgeable regarding the requirements of the
3 regulations and the person has agreed to comply with
4 those requirements. Since movements of nursery stock
5 are dependent on the inspection or testing by an
6 inspector, compliance agreements will not be issued to
7 persons interested in moving nursery stock interstate.

8 In 1997 USDA implemented a federal quarantine
9 on Orange County for red imported fire ants. Regulated
10 nurseries shipped nursery stock under a compliance
11 agreement. There are no new infestation of red
12 imported fire ants in California due to nursery stock
13 movement. In 1999, nurseries in known infested areas
14 for glasswing sharpshooters were put under compliance
15 agreement to ship host material, 99.9 percent of those
16 shipments from infested counties are free to glasswing
17 sharpshooters.

18 The nursery industry has proven that we are
19 capable of shipping regulated material under compliance
20 agreement. If the nursery is able to prove that they
21 are free from Phytophthora Ramorum, then the nursery
22 should be allowed to self inspect and shipped regulated
23 material under a compliance agreement.

24 We would also like to see more research done
25 to understand the biology of Phytophthora Ramorum. We

1 should understand its characteristics and how it
2 spreads. We would also like to see more research done
3 in the field of treatment. Currently there are no
4 treatments for Phytophthora Ramorum. There is not even
5 any recommended treatments for it. And we would like
6 to see a treatment option available for Phytophthora
7 Ramorum in the near future.

8 We would also like to see better monitoring
9 and testing techniques for Phytophthora Ramorum rather
10 than just relying on visual inspections.

11 In conclusion, to sum up, we would like to
12 see the 10 counties delimited to effectively utilize
13 our resources and to control the spread of sudden oak
14 death.

15 Two, to have timely inspections done by
16 qualified inspectors.

17 Three, compliance agreements for nurseries to
18 ship regulated articles.

19 And four, research for treatment options,
20 monitoring and testing techniques and understanding
21 Phytophthora Ramorum further.

22 The nursery industry understands and supports
23 the need of sudden oak death regulations. But, before
24 we can effectively control this disease, we must
25 understand how this disease spreads and how to treat it

1 through more research. And we believe that regulations
2 should be based on sound science.

3 Thank you.

4 MR. RHOADS: Thank you, Mr. Ono.

5 Next will be Don Dillon from the California
6 Association of Nurserymen.

7 PRESENTATION BY DON DILLON:

8 MR. DILLON: Good morning. My name is Don
9 Dillon. D-I-L-L-O-N.

10 I have, I guess, some things that I will
11 just, maybe are a bit redundant with about what Chris
12 has just gone over, but, just to highlight a few points
13 in terms of the nursery industry. It is kind of
14 interesting how we hear the gentleman speak from the
15 Forest Service and everyone feels like, I guess, they
16 are the ones being picked on, so I guess we are no
17 different in that regard.

18 First, we really would like to see
19 delimitation of this disease. We feel like that
20 certainly not widespread in the entire 10 county area
21 and that the way the Federal Rule is written it might
22 actually encourage the spread within the 10 counties.

23 We realize all the studies haven't been done
24 up to this point, but, we hope USDA would be open with
25 data to look at delimitation. And that in itself could

1 solve a lot of problems like that was brought up by the
2 Commissioner also from Solano County in regards to
3 perhaps there may be nurseries that really aren't close
4 to an area of infection. In fact, looking at the
5 regulation, it looks like, even though Oregon is
6 attempting to eradicate this pest, that they are still
7 the consensus, APHIS, I mean, USDA, I don't think has
8 guaranteed that that is going to happen and yet they
9 have delimited the county and so we would like to see
10 that same possibility in California.

11 Let's see. Also we find it interesting that
12 all the commodity groups are allowed to enter into
13 compliance agreement with USDA, except nurseries. And
14 we are wondering where that logic or language came
15 from, that the nursery industry historically are
16 probably one of the better qualified groups in terms of
17 working with regulators, with governmental agencies,
18 knowledgeable about pest and diseases. So, we would
19 like that opportunity as well.

20 Let's see. Another point would be, let's see
21 there is in Section 301.92-7, it talks about persons,
22 that you need an interstate certificate for movement
23 and you have to give 14 day notice for that to USDA for
24 inspections, like the Commissioner mentioned, it is an
25 unreasonable amount of time in the nursery business.

1 We are often having to ship less in 14 days. So, we
2 would like you to take a look at that.

3 Also a clarification on Section 301.92-9,
4 which covers cost. And we realize that USDA is paying
5 for inspections. One issue there also we are curious
6 as to the testing. And I don't know if it is clear
7 there about, if it says who is paying for the testing.

8 So, I think that about sums it up. The
9 nursery industry does realize that this is a serious
10 disease and I think hopefully working together, cost
11 wise, etc., these might be some suggestions that could
12 be helpful. Thank you.

13 MR. RHOADS: Thank you, Mr. Dillon.

14 Next we are going to have Steven R. Jones
15 from the California Integrated Waste and Management
16 Board, Sacramento.

17 PRESENTATION BY STEVEN R. JONES:

18 MR. JONES: Thank you. I appreciate the
19 opportunity to be here today. I want to, I don't know
20 if any of the three of you are from California or if
21 you are all out of the East Coast, but I want to give
22 you a little, little bit of an understanding of what
23 California generates.

24 I am going to point to a board that regulates
25 all the solid waste movement in the State of

1 California, both all the way fields, transfer stations,
2 recycling facilities, composting, all of those
3 entities, part of the six member board. We regulate an
4 industry in California where we generate in excess of
5 50 million tons of waste a year, in excess. We
6 landfill in excess of one ton a second. Our compost
7 thing and our recycling activities in the State of
8 California are critical to our achievement of a 42
9 percent reduction in waste. We recycle 42 percent of
10 the waste stream in the State of California. We
11 include C&D waste and organic material.

12 And I want to, I have to put that, I had to
13 give you that first to put this into a perspective so
14 that you can understand the enormity of what this rule
15 means in the State of California.

16 My board is continually fostering both the
17 improvement of the composting industry as well as the
18 market development of compost industry. When we have
19 got soils throughout the nation that are being depleted
20 of nitrate, we see composting as the soil amendment
21 that is going to actually help refurbish and fortify
22 that earth that we need to grow which our agriculture
23 community as well as our homes. We want to work as a
24 board with both USDA and with CDFA, because there has
25 to be a compromise here. This restriction of movement

1 of material, I think, could be considered arbitrary or
2 an overkill. From the standpoint that what I have read
3 by leaving that material in place where it is found,
4 where it can still, if there are spores that are
5 active, could still become airborne through fog or
6 other things like that. Well, we have got in the
7 biomass industry and in the composting industry, and in
8 land filling for that matter, is actual treatment of
9 this material, if it even is existing in those loads.
10 So, we need to talk about the transportation of that
11 material. Clearly when Mr. Garbarino talks about nine
12 loads a day, that he takes out of his facility, and Mr.
13 Garbarino runs an outstanding facility. It was
14 actually one of the, probably the models when
15 Assemblyman Byron Shear wrote AB939. Which mandates 50
16 percent reduction and also had a little hook that
17 cities and counties that did not realize that reduction
18 would be fined \$10,000.00 a day by my board. So, this
19 is a real law. This is a real rule. There are real
20 consequences.

21 We have worked with, on the pathogen
22 reductions, we did a study with U.C. Riverside, where
23 researchers and the Ventura County Farm Advisors
24 completed a multi year study in 1999 on applying mulch
25 and compost under a drip line of trees in an avocado

1 orchard that had been infected with avocado root rot,
2 which is Phytophthora Ramorum. I didn't say that
3 right, I am not a scientist and I apologize. The
4 study found that the wood decay fungi commonly found in
5 the mulch and the compost create enzymes that dissolve
6 the pathogen, causing the root rot. This enabled
7 healthy growth of the avocado tree roots in the surface
8 apply, into the surface, applied mulch or the compost
9 and that it was made from the yard trimmings, and we
10 are going to submit that report because that, we
11 brought that avocado orchard back to life by using a
12 composite medium that actually went after the same
13 spores that you are talking about, or a derivative of
14 that spore.

15 We need to look at the compost industry as a
16 treatment for this material. And it is critical to us
17 that we continue to work with CDFA, that we look at
18 ultimate treatment options. When we are looking at our
19 mulch material which our rules say that it has got to
20 be 15 days to effect pathogen reduction, we are
21 talking, we can strengthen that to say that that has
22 got to be turned five times or four times in that two
23 week period to make sure that heat is distributed
24 throughout that material, throughout that medium. Wich
25 I think would go to your 180, or to some of your

1 standards. But, we need to be able to at least have
2 that dialogue so that we don't kill an industry that is
3 absolutely critical to cities and counties in the
4 state, making AB939 mandates and we can't afford to
5 have our landfills filled up with this material, nor do
6 we want to see this material sitting in a field
7 somewhere as a fire hazard or some other hazard. This
8 is, this is a treatment that is viable, but we can't be
9 restricted to just say we are not going to be able more
10 it more than a quarter of a mile. You will kill this
11 industry. If the compost is a treatment, and then we
12 have been able to get feed stock to that facility for
13 treatment, for composting and then put a viable product
14 back out into the marketplace whether on fields or
15 whatever, that will have gone through the process. And
16 let's figure out a way to use data or help us, provide
17 us with some instruments where we can test that
18 material to help support your rule.

19 It is critical to us that we continue to work
20 as this, as the California, with both USDA and CDFA,
21 because we are talking about billions of dollars of
22 infrastructure and believe me I know the logging
23 community, and the nursery community have got the same
24 types of financial issues. But, we are talking about a
25 state that in the time I have spoken, every second I

1 spoke, a ton of garbage got land filled. Every second
2 I spoke a ton of garbage got land filled. And every
3 three seconds, a ton got recycled. Don't eliminate
4 that. This has been a 10 year social change. This
5 rule will kill.

6 This industry is faced with coparlid(ph),
7 where we are finding that in our feed stocks that we
8 have got to fight to eradicate. We are fighting the,
9 the pressure treated woods. They used to be colored so
10 that we could identify through our load checking
11 programs, now they are stained the exact same color as
12 normal wood, that can contaminate the material. We are
13 dealing with a mission issues in Southern California
14 where they want us to build temples to house this
15 material and now we have got this. We cannot continue
16 to see this industry assaulted because the one that
17 doesn't benefit are the citizens of California and the
18 whole nation, truthfully, since we are the providers of
19 the food for most of the nation.

20 We need your help and we need to be able to
21 look at this as treatment and not as a restricted area
22 but in a regulated area and let us move that material
23 to those markets and then work with us and tell us what
24 kind, what kind of regulations need to be in place
25 between you and CDFA, so that we can achieve that.

1 Because it is funny when I look at the, I was in
2 business for 28 years before I became a bureaucrat, one
3 that has been appointed by two governors. When I see a
4 rule that says no state can exceed, and then a page
5 later, and no state can do anything less, basically
6 they have got to your rule. So, we have got to be able
7 to work cooperatively between these agencies to
8 minimize that issue of spread but at the same time
9 recognize treatment opportunities through the biomass
10 industry, through composting and my third choice would
11 be in land filling, that would take care of both of our
12 problems. It is clearly better treatment than leaving
13 it on the ground somewhere.

14 Thank you. I appreciate it. I am sorry, my
15 name is Steven Jones, J-O-N-E-S.

16 MR. RHOADS: Thank you, Mr. Jones.

17 Next we are going to have Charles White from
18 the Waste Management in California.

19 PRESENTATION BY CHARLES WHITE:

20 MR. WHITE: Thank you very much. Charles
21 White, Director of Regulatory Affairs for Waste
22 Management. The spelling is W-H-I-T-E.

23 Waste management is California's largest
24 provider of comprehensive solid waste services. We
25 have over 6000 employees in California. We serve more

1 than 200 California communities. We operate 16 solid
2 waste landfills, five in the San Francisco Bay area.

3 Recycle America is our wholly owned
4 subsidiary and California's largest recycler of
5 municipal of solid waste. We provide curbside
6 collection to over two million residential households
7 in California, operate 15 material recovery facilities
8 in California and operate several urban wood waste
9 collection and processing facilities in Northern
10 California.

11 Wheelabrator Technologies is a wholly owned
12 subsidiary and the nation's largest operator of waste
13 energy facilities. We operate three wood waste to
14 energy facilities in Northern California.

15 Waste management has extensive operations in
16 eight of the 10 counties covered by the State, Federal
17 Quarantines on species affected by the Phytophthora
18 Ramorum fungus. It includes Alameda, Marin, Mendocino,
19 Monterey, Napa, San Clara, San Cruz and Solano
20 Counties. These operations include the collection of
21 recycling of urban green waste in many communities,
22 urban green waste makes up as much as 30 to 40 of the
23 solid waste stream. This includes green waste
24 collected at the residential curbside as well as
25 commercial green waste from landscapers, and self haul

1 operations. Those green waste we collect and handle
2 may contain the bark from the species targeted by the
3 quarantine.

4 We believe that insuring potentially affected
5 bark is kept separate from this waste stream is
6 virtually impossible or would be prohibitively
7 expensive.

8 Our operations in the quarantine counties are
9 all different. Some focus on cold composting, chip
10 green materials, with other organic wastes, others
11 focus on providing fuel for several electrical
12 generating biomass power plants located primarily in
13 the Central Valley to the East of the quarantined
14 counties. Other ship, have shipped green materials for
15 direct land application as mulch and landscape
16 materials or for use as alternative daily covered at
17 landfills.

18 Let me provide you a brief overview of our
19 Alameda County operations, which is in the East Bay,
20 just as an example.

21 We currently plan on producing well over
22 100,000 tons per year of chipped urban wood and green
23 waste from Alameda County alone. Currently this
24 material is comprised of about 25 percent wood material
25 from urban construction and demolish waste, which we

1 believe is substantially free of any bark, but 75
2 percent of urban green waste collected from communities
3 in Alameda County that we serve, that might contain
4 some of these bark from the restricted species. These
5 materials are commingled in varying degrees and shipped
6 to various end users of, you know, for the various
7 following end uses: Biomass fuel is primarily shipped
8 out of the 10 county area to other California counties.
9 Alternative daily cover at landfills, primarily at this
10 time within Alameda County, compost feed stock, mostly
11 within the 10 county area, but some is shipped outside.

12 And direct land application as mulch, landscaping
13 materials both within and outside the 10 county area.

14 In addition, we are currently contemplating
15 expanding our composting capability tremendously by
16 investing in new composting operations within Alameda
17 County in the near future. All of these operations
18 will rely heavily on the ability to collect and
19 transport urban green wood materials for these
20 purposes.

21 The recycling of urban wood waste in Alameda
22 County is not only an important business activity,
23 generating approximately one million dollars per year
24 in revenue, but is absolutely necessary for communities
25 we serve to comply with California solid waste

1 recycling laws as Mr. Jones has pointed out. That
2 mandate required communities we serve to recycle 50
3 percent of their solid waste otherwise destined for
4 disposal and if not, they could be subject, as Mr.
5 Jones pointed out to a \$10,000.00 per day fine. A band
6 on the shipment of these materials would not only be
7 devastating economically to commercial operations such
8 as ours, but it would absolutely cripple the ability of
9 communities within the 10 county area to comply with
10 the State's solid waste recycling goals and mandates.

11 I don't have an exact number, but I would
12 guess that substantial prohibition under shipment of
13 woody materials that may contain bark of the affected
14 species could substantially impact at least three to
15 five million dollars pre year of our company's business
16 alone within the 10 county area. To say nothing of
17 similar impacts on other companies operating the region
18 and could substantially limit the ability to recycle or
19 even dispose of urban wood waste generated within the
20 10 county area. It is hard to guess, but I would say
21 we are talking at least a 10 to 15 million dollar or
22 more total impact on the entire 10 county area with
23 respect to urban wood waste.

24 What are we asking for? We are asking that
25 the quarantines and by quarantines I mean both the

1 federal and state quarantines, together, be interpreted
2 in such a way that will at least allow a means to
3 continue transporting potentially affected materials
4 intrastate, that is both within the 10 county area and
5 from the 10 county area to other supervised locations
6 in California, if in the words of the existing CDFA
7 quarantine, it is either (1) produced, stored or
8 handled in a matter approved by the CDFA to prevent
9 infestation of the pest, of the pest. Or (2) move by a
10 permit issued by an authorized Agriculture official
11 specifying the required containment conditions and a
12 handling utilization or processing as authorized by the
13 official.

14 We believe that urban green waste material
15 should be able to be shipped either under the above
16 CDFA approved mechanisms to the following destination,
17 both within the 10 county area and to other designated
18 intrastate California destinations.

19 (1) Biomass conversion fuels. The green
20 materials would be transported, stored and completely
21 burned under controlled and supervised high temperature
22 conditions that will completely destroy the
23 Phytophthora Ramorum fungus.

24 (2) Landfill application. Direct landfill
25 disposal or use of green materials as alternatively

1 daily cover within a landfill will completely contain
2 any Phytophthora Ramorum contamination within that
3 landfill. In fact, how else could potentially affected
4 bark be safely and securely disposed from a debarking
5 operation unless transportation to a landfill is
6 allowed.

7 Composting. We believe there is substantial
8 evidence that proper composting conditions
9 substantially destroy the Phytophthora Ramorum fungus.

10 We believe that we will, you will hear from others
11 today on this very issue. As long as there is a
12 substantial likelihood that proper composting can
13 destroy the Phytophthora Ramorum fungus, the controlled
14 and supervised composting of urban green materials
15 should continue to be allowed under permitting or
16 authorization procedures administered and supervised by
17 the CDFA and responsible county Agriculture officials.

18 Permits could be issued on a condition of specified
19 operating parameters or monitoring conditions at these
20 composting facilities.

21 Even though we would like also to continue
22 shipping green materials from the quarantine area for
23 direct land application as mulch or landscaping
24 materials, we recognize this material could potentially
25 lead to the spread of disease. We would like to keep

1 the door open for this kind of use, if it can be shown,
2 as Mr. Jones pointed out that mulching operations might
3 be useful in controlling the spread of the fungus as
4 well. So, I would urge you to provide a mechanism to
5 allow that possibility to be kept open for the use.
6 But, at a minimum, we would trust that you would, we
7 would be able to continue the shipment of chipped urban
8 C&D wood waste that is free of bark from Phytophthora
9 Ramorum infested species for purposes of direct land
10 application.

11 With respect to the CDFA quarantine on
12 intrastate shipments that became effective on December
13 14, the plain English reading of that quarantine
14 effecting intrastate shipments of specified woody
15 materials originating within the 10 county area appears
16 and I say appears to potentially allow the continued
17 shipment of urban wood waste as I have just described.

18 We have begun discussions with CDFA to ensure our
19 operations are in compliance with its provisions.

20 The USDA quarantine on interstate shipments
21 on the other hand, our concern with that quarantine is
22 not with any direct impact on interstate shipments. We
23 simply don't have any interstate shipments at this
24 time. However, we have been advised by both USDA and
25 CDFA officials that the more restrictive provisions of

1 the USDA quarantine on interstate shipments could spill
2 over and affect how the CDFA interprets their own
3 intrastate quarantine. Simply stated, if the
4 restrictions of the USDA interstate quarantine are used
5 to apply the provisions of the CDFA interstate
6 quarantine, it would be devastating to our business and
7 the communities we serve. The specific problems we
8 have with the USDA quarantine, if applied at the
9 intrastate level are as follows: Restrictive articles
10 may only be shipped under a USDA permit for
11 experimental or scientific purposes. More latitude is
12 needed to be provided for the shipment of articles that
13 are currently designated as restricted.

14 Regulated articles maybe shipped from the
15 quarantine area under a certificate, however, regulated
16 articles only include the types of materials we ship as
17 I have described previously, if the article has either
18 been treated by high temperature water immersion, the
19 article is free of bark or the article has not been in
20 direct physical contact with Phytophthora Ramorum. None
21 of these conditions or requirements are practically
22 applicable to urban green materials we handle. More
23 latitude must be provided to allow for the permitting
24 or approved shipment of restricted articles dependent,
25 not on how they are treated prior to shipment, but how

1 they are being shipped and use activities like land
2 filling biomass conversion or composting.

3 Even though unprocessed wood and wood
4 products, this is number three, even though unprocessed
5 wood and wood products and plant products including
6 fire wood, logs and lumber are specifically included in
7 one part of the USDA quarantined as regulated
8 materials, they become restricted material under
9 another part of the quarantine unless treated free of
10 bark or not in contact with Phytophthora Ramorum.

11 Number four, an interesting provision if
12 applied at the local and intrastate level is the
13 Federal quarantine does not appear to provide for a
14 means of legitimate disposal of the woody materials
15 infected by the Phytophthora Ramorum fungus. How does
16 the quarantine contemplate the management of known or
17 potentially infected plant material for safe and secure
18 disposal? There must be a provision placed into the
19 quarantines that will allow infected plant material to
20 be collected transported and safely disposed of. We
21 would recommend that permitting or authorized landfill
22 disposal, biomass conversion as fuel and incineration
23 be specifically allowed by the quarantine as a means of
24 safely managing plant materials with known or suspected
25 infection. Unlike the State's CDFA quarantine, the

1 Federal USDA quarantine does not provide for any type
2 of permitting process even a limited permitting process
3 to allow plant materials to be transported for purposes
4 of removing or reducing risks of the disease.

5 Finally, and really most importantly with
6 respect to the management of urban green waste, the
7 quarantine does not provide for a means of shipping
8 green materials under permit or control conditions if
9 there is a substantial likelihood that the designation
10 point will treat or handle the materials in such a way
11 so as to control the spread of the disease. Use of
12 green material for biomass fuel, landfill disposal,
13 landfill of daily cover and composting activities
14 should be specifically allowed by the USDA quarantine,
15 at least at the intrastate level through a CDFA
16 permitting or authorization process.

17 Waste Management really appreciates the
18 opportunity to provide these comments for your
19 consideration. We will be expanding on these comments
20 in writing during the remainder of the public comment
21 period. We ask that you work with us and other stake
22 holders to develop a federal and state quarantine
23 framework that will provide reasonable safeguards
24 against the spread of the Phytophthora Ramorum fungus
25 while at the same time providing workable opportunities

1 for the movement of urban green materials under
2 control, authorized or permit conditions, the likewise
3 will not contribute to the spread of the disease.
4 Waste Management would be pleased to meet further with
5 you, if you have any questions about our operations or
6 discuss how to best configure to control the spread of
7 the disease while providing a means of safely and
8 securely handling urban green materials to meet
9 California recycling goals and waste management
10 objectives.

11 Thank you very much and I do have a couple of
12 copies here, but we will be expanding upon it as I
13 indicated.

14 MR. RHOADS: We are going to take, at this
15 time, about a 10 minute break, get up and stretch your
16 legs and we will start again at about 20 of 11.

17 (Whereupon, a short recess was taken.)

18 MR. RHOADS: One more comment. If you didn't
19 sign, if when you signed up, when you signed up this
20 morning, you signed one of these sheets and you didn't
21 make a little note in the margin that yes, you want to
22 speak, we asked for anyone who was coming whether they
23 were going to speak or not, sign up. If you plan to
24 speak, and you didn't either put a check in the margin
25 or say, yes, that you want to speak, could you please

1 go see the gentleman out by the sign out desk to make
2 sure that we have you in line, that we are not skipping
3 over you one way or another. And I don't want to keep
4 people here any longer than they need to be.

5 Okay. The next gentleman to speak will be Mr.
6 Don Herzog.

7 PRESENTATION BY DON HERZOG:

8 MR. HERZOG: My name is Don Herzog,
9 H-E-R-Z-O-G. I represent the California Farm Grow
10 Federation Oriental Horticulture Committee and also I
11 am a nursery, have a nursery in Solana County.

12 What we are concerned about is establishing a
13 compliance agreement of at least 30 days, the same as
14 the Federal Sanitary Standard in order to certify our
15 plant materials. Where I live in Solana County and in
16 the West, there are several nurseries who specialize in
17 the restricted material, namely Azaleas and
18 Rhododendrons. And our methods of sales and
19 interstate and intrastate shipping vary considerably,
20 but we do send a lot out of our area into other parts
21 of the country.

22 We ship, in my nursery, between five and six
23 thousand boxes of plants including the restricted
24 material. Because we are a specialized nursery, I
25 will show you how we do it. And this is our box, and

1 we have three inch plants. We sell them to nurseries
2 all over the country, in the 50 states. We just drop
3 them in there, put a piece newspaper over them and ship
4 them primarily air freight, but UPS, FedEx, etc. Now
5 the problem we have is that I get a call on the
6 telephone, ship me a box of plants, or a box, bonsai
7 starters and include three Azaleas, six Azaleas,
8 whatever it is. If it is closer to Azalea blooming
9 time, they want more. Now, in Section 301.92-11,
10 Section 2, it says inspection of individual interstate
11 shipment of nursery stock. Anyway, if you want to come
12 out and inspect every single box, you are welcome to,
13 but you will be at my nursery five days a week.

14 Now, it even gets to the point that this is
15 how we have retail, too. We sell on the Internet and
16 so, we ship plants. There is an Azalea, a miniature
17 rose, and we ship probably 15,000 boxes like this and I
18 am gearing up to about 80,000, because I specialize now
19 in miniature Azaleas and miniature Rhododendrons. And
20 if you would like to come out and inspect each one of
21 these every day, you are welcome to come.

22 What our industry is concerned about with the
23 restricted material, is having a compliance agreement
24 of at least 30 days. We don't mind you coming and
25 checking every 30 days and giving us a certification

1 stamp or something so that we can put it on each box or
2 each invoice that we ship. And that is our main
3 concern. Thank you very much.

4 MR. RHOADS: Thank you.

5 Next we are going to have Mr. McFadden.

6 PRESENTATION BY GUINNESS MCFADDEN:

7 MR. MCFADDEN: Good morning. My name is
8 Guinness McFadden. I am a farmer in Mendocino County.
9 I have a vintage, we grow herbs, we raise cattle and
10 one of our businesses in November and December is
11 Bayleaf wreaths. What I would like to do this morning
12 is response to an invitation to comment on something
13 and then bring up three other issues if I might.

14 I feel a little disorientated since all these
15 macro numbers are being brought up, but maybe you get a
16 little rounder picture if you talk to one business just
17 like my predecessor here.

18 The economic impact of such a quarantine
19 would be great on us. The treatment advanced for
20 sanitation of wreaths would basically ruin the wreath
21 and put us out of business. I have about 40 people
22 who depend on income that time of year, and they are
23 the same people that work in the vintage, the same
24 people that work in our cattle operation and the same
25 people that work in our, our herb business. And I have

1 a feeling that it might make it less attractive to them
2 to maintain their employment with me if we were out of
3 this business. Plus the fact I still have three
4 children in college and it would be less attractive for
5 me to send them to college. So, I think there is
6 economic impact at least on me.

7 So, I have three questions for you. The
8 science behind this Draconian measure of dipping these
9 things into 160 degree water for an hour, I would be
10 interested in knowing more about that, but more
11 particularly, because I am not really interested in
12 knowing more about that, because it is totally out of
13 the question. But, I would be more interested in
14 knowing is, is there or are there alternatives that are
15 scientifically approved and embraced by the industry?
16 In other words, are there other ways of doing it. I
17 have kind of looked into irradiation, which is an apt
18 to us since I am organic also, but I could become less
19 organic on this particular part if it worked, but,
20 apparently it doesn't because the irradiation evidently
21 works on fairly complex DNA structures and the fungus
22 involved here is pretty simple. And I gather from
23 people I have talked to, that irradiation wouldn't
24 work. But, that might not be true. There might be
25 other ways of doing that would, sanitizing these things

1 that might render the plant still useable and saleable.

2 We do, by the way, sell all over the United
3 States. We ship out 40 to 50,000 individual packages
4 during that time and they go all over the United States
5 and some to foreign countries. So, I am interested in
6 the science involved in this.

7 Also, Mendocino County, as I understand it
8 from our Agriculture Commission people have two
9 isolated incidents of, of instance of this particular
10 disease that are located some 50 miles as the crow
11 flies from our area, where we pick our leaves. And I
12 also noted with interest that Curry County in Oregon
13 has a nine square mile area quarantined, if I read the
14 material correctly, I infer from that that the rest of
15 Curry County outside of that nine mile, square mile
16 area, is not quarantined. So, I would wonder if
17 Mendocino County, which is a very large county, could
18 be judged the same as perhaps Curry County in Oregon
19 is, i.e., some areas that are infected, perhaps a
20 buffer area around that, and other areas which are
21 deemed to be not infected, could be considered clear.
22 If that is not possible, then there is another theory I
23 would like to advance and that is that there is a
24 possibility of picking leaves in a neighboring county
25 in this particular case, it would be Lake County,

1 California, which is not infected and then bring them
2 into Mendocino County, where my farm is, would that, in
3 fact, render the leaves infected?

4 Now, one of my predecessor up here had a very
5 interesting way of ending his thing. He said, what I
6 am asking for? I like that. So, that is what I am
7 going to do.

8 What I am asking for? I am asking for
9 alternative sanitizing methods that won't destroy the
10 wreaths, and I would also like to indicate to you that
11 there is a time question here. Most of my customers
12 are catalogue sales companies. They take their
13 pictures for the fall catalogue in the late spring.
14 So, we are looking at not a long time that I would
15 prefer something to be done.

16 And the other thing I would like to know is
17 if it would be possible to allow picking from non
18 infected areas of a county that has been declared
19 infected, that could be inspected by state and/or
20 federal authorities to confirm that at least that part
21 of the county is clean?

22 Thank you very much.

23 MR. BAKX: Can I ask a question, if this
24 person still here, the question came up on (inaudible)

25 MR. RHOADS: I am sorry, I had a hard time

1 hearing you. Maybe you just want to come.

2 MR. MCFADDEN: Do you want me to stay here?

3 MR. BAKX: Yes. It is a question that
4 another -- grower asked me.

5 MR. RHOADS: Give your name, please?

6 MR. BAKX: Will Bakx. I am with -- Compost.
7 The treatment on wreaths, if glycerine
8 treatment and I think that is used on wreaths.

9 MR. MCFADDEN: Not mine.

10 MR. BAKX: But, some of them do.

11 MR. MCFADDEN: Maybe.

12 MR. BAKX: If that would be an alternative
13 treatment? So, in other words, you know, I support him
14 in looking at alternative treatments on, because the
15 question comes up, I get those questions from people
16 when they talk about sudden oak death.

17 MR. RHOADS: As it stands right now, the only
18 I think the regulations make it somewhat clear that we
19 are talking for wreaths and garlands, that we are going
20 to require that dip. We understand, you know, that
21 there are other, there could be other treatments
22 available. And really welcome you all to submit any
23 data that you got that would support, that these would
24 otherwise be an effective treatment from Phytophthora
25 Ramorum, glycerine treatment or what. Please submit

1 whatever information you have got to us. We are open
2 to other alternatives.

3 MR. JONES: We are looking for the
4 alternatives. When we set up the regulation, the
5 information, the only information we could find was the
6 dip, which we recognized isn't going to work for all
7 wreath growers. It might work for some. And we hope
8 that folks in this room, folks affected by the
9 regulation or interested parties can identify some
10 others that we can evaluate and hopefully add to the
11 regulation, so you have more flexibility, you know, to
12 keep doing what you are doing in a cost effective way.

13 MR. MCFADDEN: Do you know if the present
14 regulations preclude picking leaves in an non infected
15 county and bringing them into an infected county to
16 assemble them?

17 MR. JONES: Yes, your question and you
18 specifically said to Mendocino and sending back out.
19 Once a regulated article enters a regulated area, it
20 becomes regulated under the current regulations. What
21 you are suggesting would be, I think, a possible
22 regulatory change, you need to comment and suggest to
23 and lay out how it might work. It might be under
24 something like a limited permit situation where it was
25 brought in, safeguarded, separate from anything from

1 the county and otherwise protected from being exposed
2 to the disease and shipped out with this identity
3 preserved, but currently the regulations don't allow
4 for that.

5 MR. MCFADDEN: What do you think the time line
6 on doing something like that is? It sounds like it
7 would be better for me to set up an assembly plant out
8 in Lake County.

9 MR. JONES: Time frame for a regulatory
10 change.

11 MR. RHOADS: Any changes that are made
12 directly, any changes that are made directly in
13 response to this particular document, unless it becomes
14 a separate action, I mean, the time lines for, as you
15 have seen, I mean it took us a good while to get the
16 original Interim Rule out. Any follow-up action to
17 this is probably several months in the making. And we
18 have to wait until the comment period closes and
19 evaluate other comments. And so that gives us until
20 the, you know, the middle of April as it is, and from
21 that date, we need time to evaluate, figure out what
22 the best approach is for this --

23 MR. MCFADDEN: So, as it stands now, that
24 somebody in Lake County can pick leaves in Lake County,
25 make the wreaths in Lake County, and ship them out and

1 be in compliance.

2 MR. RHOADS: Lake County is free, they are not
3 regulated yet.

4 MR. MCFADDEN: Thank you.

5 MR. RHOADS: Yes.

6 (Pause.)

7 MR. RHOADS: Okay. Next I am going to have
8 John Westoby from Sonoma County, Agriculture
9 Commissioner.

10 PRESENTATION BY JOHN WESTOBY:

11 MR. WESTOBY: Good morning. I am John
12 Westoby. I am the Commissioner from the County of
13 Sonoma.

14 As you may know the Ag commissioners are
15 responsible for implementing the regulatory enforcement
16 program for protecting California from further spread
17 of sudden oak death disease. We have been working
18 diligently with our State Department of Food and
19 Agriculture over the past several months to come up
20 with a program that is biologically sound and fits with
21 the financial resources that have been made available.

22 We also expected the proposed Federal Regulations to
23 mirror our California regulations but as proposed the
24 Federal Regulations not only are misaligned with
25 California, the Federal Regulations fall short of being

1 financially sound and require a level of enforcement
2 that is either, neither practical nor affordable.

3 I will mention just a few areas in the
4 Federal Regulation needed reconsideration.

5 First and foremost, California regulations
6 should be the guideline for regulating the movement of
7 host material in California not the federal proposal.
8 The California regulations do not require individual
9 shipment by shipment inspection and certification but
10 rely on a comprehensive approach that includes
11 compliance agreements, nursery certification and
12 monitoring. Adequate funding for this type of program
13 has been appropriated. So, it was no included in the
14 interstate regulations, do we now have to regulate all
15 soil moving from regulated counties?

16 In California regulation Azaleas were not
17 included as a host. Can we still exclude them from
18 intrastate shipments?

19 An interpretation was made by scientists and
20 regulators that host logs over four inches in diameter
21 did not pose a risk of spreading the infection of the
22 SOD. Can we still use this interpretation for
23 interstate shipments and intrastate shipments?

24 Previous to the Federal quarantine,
25 enforcement responsibilities fell as follows: The USDA

1 Forest Service is responsible for national forest
2 lands. California Department of Forestry and Fire
3 Protection is responsible for enforcement in state
4 forests and for commercial timber harvest on private
5 lands. California State Parks for enforcement in state
6 parks. National Park Service for enforcement in
7 National Parks and all other lands would be regulated
8 by the county agriculture commissioners. Will this
9 still be the case for intra and interstate shipment?

10 Free from surveys were described in the State
11 regulations. Host materials from those areas
12 determined by survey to be free from the disease, were
13 allowed to be shipped intrastate. Can this also be
14 applied to interstate shipments? I think you just gave
15 an answer. And how was Oregon able to delimitate a
16 portion of their county?

17 There has been some confusion as to the type
18 of testing that would be required to certify nursery
19 stock, whether PCR or ELISA testing would be
20 appropriate for this purpose. As stated before
21 AB939, the California law, required counties to reduce
22 solid waste disposal at facilities by 25 percent in
23 1995, and 50 percent by the Year 2000. A major
24 component in compliance with this regulation has been
25 the diversion of green waste to compost and mulch back

1 into the environment. Treatments have been suggested
2 for host species, green waste and burrow wood. Dr.
3 Garbaletto of the University of California at Berkeley
4 has completed studies that indicate composters meeting
5 a requirement for the California Waste Management Board
6 as to temperature and handling requirements, would
7 eliminate Phytophthora Ramorum from green waste. Also
8 Drs. Rizzo and Garbaletto have implemented or have not
9 implemented the wood of California Bay Laurel,
10 Umbellaria californica or and big leaf maple, Acer
11 macrophyllum as being capable of transmitting the
12 disease. How can we incorporate these findings into
13 approved treatments?

14 There are a number of small businesses that
15 will be affected adversely by the Federal quarantine.
16 Nurseries, lumber mill, burrow wood harvesters,
17 brokers, wood cutters, Bay Laurel wreath suppliers and
18 others. How will their lost of business be
19 compensated?

20 Although many counties have instituted
21 surveys to determine if and where SOD is located within
22 their boundaries, there has been little information
23 regarding the degree to which other states are
24 surveying for the disease. There has been some
25 indication that SOD may have been introduced into the

1 United States through shipments of Rhododendrons from
2 another country. Have the states been surveyed where
3 these Rhododendrons were distributed? Restricting
4 only states that have aggressively tried to deal with
5 the disease seems unfairly, to unfairly put them at an
6 economic disadvantage. Should other states that have
7 received shipments of host materials be required to
8 survey in order to stay out of the quarantine?

9 The infected counties are working on a
10 contract with the California Department of Food and
11 Agriculture to fund a regulatory program that will last
12 nine months. Each of the counties affected have
13 indicated they will need one extra person to carry out
14 the minimum State regulatory program. What federal
15 resources are available to fund the increased
16 regulatory requirements by the Federal Quarantine?

17 And lastly, the California regulation allowed
18 host material such as harvested Bay Laurel leaves
19 collected from non infested counties to enter an
20 infected county. If those leaves were safeguarded in
21 an infested county, the finish product was allowed to
22 be shipped without restriction. Will the Federal
23 regulation be changed to allow safeguarding host
24 material to be shipped from infested counties?

25 I also have written comments from the

1 Commissioner of San Mateo County. Is it appropriate to
2 give you those now?

3 MR. RHOADS: Sure. I would be glad to accept
4 them.

5 (Pause.)

6 MR. RHOADS: Next we are going to have Dave
7 Bengston, Agriculture Commissioner of Mendocino County.

8 PRESENTATION BY DAVE BENGSTON:

9 MR. BENGSTON: Can everybody hear? I have a
10 problem hearing. I have been sitting in the back of
11 the room going like this all morning.

12 Hello, my name is Dave Bengston. I wanted to
13 thank you for being here and allowing us the
14 opportunity to be heard. I am the Agriculture
15 Commissioner for Mendocino County, California. One of
16 the 10 infested and infected counties.

17 I am in favor of and I support the Federal
18 Rule for Sudden Oak Death. I have been enforcing the
19 law and plant quarantines for 30 years. I do think
20 that the Interim Rule on Sudden Oak Death needs some
21 fine tuning before finalization.

22 I have a few comments. First and foremost,
23 we need additional funds, manpower and resources to
24 carry out these regulations. We are already over
25 loaded.

1 I have some specific comments on some of the
2 code sections. They are Section 301.92-2 in regards to
3 the soil regulation. I am afraid that the way it will
4 be enforced may make it meaningless and possibly lead
5 to legal challenges. There should be a differentiation
6 between native soil and artificial soils or plant
7 mediums, such a perlite, vermiculite, etc. for the sake
8 of the nursery industry. And I think if the equipment
9 is allowed to come into the areas and carry away soil
10 such as logging equipment and fire equipment, we will
11 be missing the boat. The worse omission that I see,
12 is if hikers, bicyclers and all train vehicles are
13 allowed to enter and leave forested areas without any
14 kind of regulation, they actually pose the biggest
15 threat of and all according to federal contacts, they
16 will not be regulated. My point is if we are going to
17 do soil, we should either do it or not do it. But, if
18 we are going to do it, we should do the highest
19 priorities first and worry about the lower priorities
20 later. It looks to me like and from what I have heard,
21 we are going to go after the low priorities and ignore
22 the high priorities. And that to me makes no sense.

23 Section 301.92-7. A person desiring the
24 certificate must request one at least 14 days in
25 advance. Well, this is trying to make it easier on us

1 regulators, this could be an extreme hardship and an
2 unnecessary time constraint on business. The
3 regulatory officials should have the opportunity to
4 waive this time period if at the time it is
5 unnecessary.

6 Section 301.92-10. Reason greenery of host
7 plants must be dipped in hot water bath at 160 degrees
8 for one hour. Well, you just heard one of my producers
9 from my county come up here and discuss that. The cost
10 of this treatment is unknown and we welcome comments.
11 That was what was in the Interim Rule. Well, the cost
12 is a total destruction of the product and the lost of
13 the business. And in the first place, I do not think
14 we are talking about a viable path of infestation. The
15 reason we will probably end up in cooking pots or in a
16 fire or in a dump. I don't think they are going to end
17 up back in the forest. There should be alternate
18 treatments available as options. In Mendocino County,
19 what we already did in anticipation of this as soon as
20 we found out we had sudden oak death, we surveyed Mr.
21 McFadden's sites where he was picking his laurels to
22 see if we had any signs of sudden oak death. We didn't
23 have any signs, so we did a survey. We took it a step
24 further actually, too. We took samples from the trees
25 in those areas and submitted them to the lab. And all

1 results were negative. So, I think, just like with
2 other quarantines and other treatments, we should have
3 other options and it seems to me like survey and
4 laboratory samples with evidence of negative
5 infestation should be an alternate option to shipment.

6 I also want to point out in federal law,
7 wreaths that are made of wheat, that are coming in from
8 other countries into the United States, are exempt from
9 the carnal bundt quarantine. And that was done because
10 it was felt that really wasn't a viable pathway and I
11 think the same thing is applicable in this case.

12 Section 301.92-11. If fewer than 40
13 symptomatic plants are found in a nursery during an
14 inspection, the inspector must collect samples from non
15 symptomatic regulated articles so that the total number
16 of sampled plants is 40. This an absurdly high number
17 in regulatory plant pathology. The CDFA state lab at
18 this time, is set up to handle about 30 to 40 samples
19 per day. So, in just a few counties, there are 10
20 counties, if a couple of us counties are pulling
21 samples in nurseries and we take just, you know, a
22 couple of nurseries in a couple of different counties,
23 we are going to completely overload the State lab, the
24 system. We just don't, you know, it is a logistical
25 nightmare. And there is no sense to that, to pull

1 samples from non symptomatic plants. That doesn't make
2 too much sense, especially that number. There is not
3 enough time and money to waste in this manner. And
4 what would all the sampling accomplish? What is the
5 methodology to be used? Somebody has asked that
6 question already as the PCR, ELISA testing. And I
7 would point out that until now there has only been one
8 find of SOD in a nursery situation, in nursery stock.
9 SOD has not really been a nursery problem.

10 And one final note, I think there should be
11 compliance agreements for all nurseries.

12 The impact of the Interim Rule, some of the
13 information in this section was taken from a joint
14 survey done by USDA and CDFA and I am glad they did
15 that survey, because it did give us information. But,
16 one of my concerns is that many people were not ever
17 contacted. Many people in Northern California use
18 firewood as their sole source of house heating and many
19 people cut and sell firewood as their sole source of
20 income. Some of these people do not have telephones,
21 business licenses or even addresses. I know this
22 because we have tracked them down on other law
23 enforcement issues and it is rather difficult. They
24 are hard to contact, but they are using these products
25 out of necessity. They will be a very, very, very hard

1 group to regulate.

2 And then under the Hot Water Leaf Treatment
3 it asks for feedback. I have already discussed this
4 above. And the cost will be the total destruction of
5 the product and the loss of the business. So, it
6 really isn't, you know, how much does it cost to heat
7 up this water and dip these wreathes in there, that
8 isn't the point. The cost is the product is lost as
9 useable product.

10 The Debarking Rule and I am discussing this
11 from the standpoint of burl wood now from the timber
12 industry and logs. I would ask what is the biological
13 basis for this rule? We have already learned that
14 firewood or logs over four inches in diameter do not
15 pose a high pest risk. And is the bark really more of
16 a pest risk than the wood? I don't think that the
17 latest scientific evidence has shown us that. This is
18 an unnecessary component. It sounds like it was put
19 there because of history with other unrelated pest
20 problems and quarantines. And removing the bark from
21 burl wood that are being used for, you know, fine wood
22 products, or just for people to look like, look at,
23 will cause those burl wood to dry out and check. It
24 would ruin those products. The end result, just like
25 the wreathes, would be total destruction of the product

1 and possibly the business going out of business.

2 The Executive Order 12866 in the Regulatory
3 Flexibility Act. There is a quote in there that, there
4 is no basis to conclude that adoption of this Interim
5 Rule would result in any significant economic affect on
6 a substantial number of small entities. And it goes on
7 to say that they don't have all the information and
8 they do want more information. So, that is what we are
9 trying to do. The businesses shipping greenery,
10 wreathes and businesses shipping burl wood would have
11 to destroy their products and therefore, their
12 businesses to be in compliance. And nurseries shipping
13 Rhododendrons, and native plants would also be impacted
14 and since the inclusion of soil, I think some other
15 nurseries are going to be impacted, too.

16 I would say in my county there would probably
17 be around 15 to 20 businesses that would be severely
18 impacted. You heard from just one person specifically.
19 I think there is quite few more out there.

20 And my last comment is just like I think
21 maybe there is undue emphasis being place on the
22 nursery industry because there has only been one find,
23 I think there is also an undue emphasis on the urban
24 situation, with respect to greenery and green waste.
25 As far as I know sudden oak death has never been found

1 in an urban situation, not once. So, there is no
2 evidence to support putting any kind of priority or
3 emphasis or inspection or anything else on that area.
4 And I think that is misdirected.

5 Thank you.

6 MR. RHOADS: Thank you, Mr. Bengston.

7 MR. LOPEZ: I would like to make one comment
8 on (inaudible) questions if possible.

9 MR. JONES: Come to the mike.

10 MR. RHOADS: Yes, could you, is it going to be
11 just a few concerns?

12 (Pause.)

13 MR. LOPEZ: This topic has already been
14 (inaudible)

15 MR. RHOADS: Could you just say your name,
16 sir, please?

17 MR. LOPEZ: Yeah, my name is Sam Lopez. This
18 topic has been talked about a couple of times over the
19 evening. I have been in the burl wood business now for
20 25 years. And I am trying to figure out a solution
21 with this. I have several thousand dollars of
22 materials sitting in the field right now. I cannot
23 move it. It has caused me to go into bankruptcy. I
24 ship my wood domestically and internationally. I am
25 trying to figure out a way we can get around it and I

1 wonder if possible we can use a hot paraffin wax to
2 seal the wood for transportation domestically and
3 internationally? Once it reaches its destination,
4 normally they reach, boil the wood to a temperature of
5 160 up to 180 degrees. And I would like to have an
6 answer on this as soon as possible because I am losing
7 my business, my wood is checking and my life is about
8 ready to go into a bankruptcy. But, if there is any
9 way you can answer this in the near future, before I
10 lose most of my investment, give me an answer on that
11 as soon as possible, either by letter or by notice of
12 somebody from the Department of Agriculture.

13 MR. RHOADS: Sure. If you are going to be
14 around, I encourage you to speak with us, you know,
15 when we take a break and we will --

16 MR. LOPEZ: Okay. Thank you.

17 MR. RHOADS: Next we have Chuck, Chuck Helget,
18 Allied Waste Industry.

19 PRESENTATION BY CHUCK HELGET:

20 MR. HELGET: Hi, my name is Chuck Helget,
21 H-E-L-G-E-T. And I represent Allied Waste Industries
22 and Browning Ferris Industries.

23 In our view this rule as drafted is very
24 inflexible. And unlike the earlier state rule does not
25 take into consideration the need to safely haul,

1 process and dispose of green materials that are
2 extremely difficult to distinguish infected from non
3 infected materials. My client operates waste hauling,
4 disposal, composting and processing operations in most
5 of the quarantined counties. We handle residential
6 green waste in these counties. The green waste may or
7 may not include some of the host species listed in the
8 rule. And may or may not include materials that are
9 infected. How are we to determine in any of these
10 loads whether or not they include infected materials,
11 is a very difficult question and one that I think needs
12 to be answered.

13 Will we be expected to obtain certificates or
14 certification or some permitting from the residents and
15 businesses in all these counties? I think that would
16 be a ridiculous assumption, but, to some degree I think
17 the rule could be read to require that. We have
18 contracts and franchise agreements that require the
19 removal and processing of green materials and of the
20 recycling of much of these materials to make state
21 mandates and state law. This rule's blanket
22 restriction of interstate shipments of the natural host
23 and soil listed in the rule, will seriously impair
24 ability to remove green waste from the residents and
25 businesses in these counties.

1 We are prohibited from safely managing and
2 processing this waste for compost, alternative daily
3 cover at the landfills, biomass conversion and even
4 disposal. We are concerned that there will be
5 significant health and safety considerations in other
6 areas. There needs to be enough flexibility in this
7 rule to allow for the safe handling on processing and
8 disposal of this material. And because of these health
9 and safety concerns this material cannot be left in the
10 streets. The solution is flexibility in the rule to
11 allow for safe and effective composting, biomass
12 conversion and land filling this material. The State
13 rule as I understand it allowed interstate shipment
14 with reasonable controls. We urge you to take the same
15 approach in the Federal Rule.

16 We urge you to work with the State agencies,
17 particularly the Integrated Waste Management Board, Mr.
18 Jones= represents, to modify this rule, to specifically
19 allow interstate shipments of green waste materials in
20 the affected counties to biomass facilities, landfills,
21 and composting operations.

22 Thanks for this opportunity to comment. And
23 we hope again that you will work with us to achieve the
24 goals of this rule, while addressing the concerns
25 raised this morning by those of us whom must live with

1 the impacts of this rule. Thank you.

2 MR. RHOADS: Thank you.

3 Next we are going to have Dan Gasser, PG&E.

4 PRESENTATION BY DAN GASSER:

5 MR. GASSER: Good morning. My name is Don
6 Gasser, G-A-S-S-E-R. And I am Assistant Forester for
7 PG&E. I appreciate the chance to share concerns with
8 you.

9 The Vegetation Management Department of
10 Pacific Gas and Electric Company has the responsibility
11 for line clearance work on almost all of the electrical
12 distribution and transmission lines within the infested
13 areas of sudden oak death. PG&E has been active and
14 has a geographic information system that has the latest
15 infested areas mapped as soon as they are posted from
16 the California Oak Morality Task Force, and this
17 information is immediately available to area managers.

18 Since January 2001 the line clearance crews have been
19 knowledgeable about where the disease centers are and
20 the crews have been removing vegetation and
21 disinfecting tools prior to leaving infested areas.

22 These tree crews have attempted to leave
23 potential host material on the site from which it has
24 been cut. Often the owners of the trees balk at
25 having the mess of the trimmings remain on their

1 property. Many refuse to allow the trimming, putting
2 PG&E in violation of state law and California Public
3 Utility Commission Regulations. This starts a lengthy
4 and expensive process to overturn the refusal, which in
5 the meantime subjects the neighbors to fires and
6 outages. More education about regulations is needed
7 for the land owners within infested areas.

8 Leaving host vegetated material on site is in
9 opposition to the California and National Fire Plans
10 and flies in the face of public safety and good
11 resource management. Part of the regulatory scheme
12 must include a sanitary means by which suspected
13 infected host material can be transported to biomass
14 and compost facilities where *Phytophthora Ramorum* can
15 be killed or we may end up fueling our own destruction
16 in the desire to prevent disease spread.

17 Pacific Gas and Electric Company is ready to
18 respond where it can to reduce the damage and the
19 spread of sudden oak death, but please make your
20 directions clear and concise so that public safety and
21 public education are well served.

22 Thank you very much.

23 MR. RHOADS: Thank you.

24 Okay. Next we are going to have Don Mendel,
25 general counsel for the Nurserymen's Exchange Half Moon

1 Bay.

2 PRESENTATION BY DON MENDEL:

3 MR. MENDEL: Good morning. My name is Don
4 Mendel and I am general counsel for the Nurserymen's
5 Exchange, and I want to thank you for the opportunity
6 to come and speak with you and share with you our
7 concerns and comments.

8 First off, what I would really like to do
9 today is focus on a business and industry and try to
10 give you a snapshot of what our concerns are as it
11 affects us directly as an ongoing business.

12 Nurserymen's Exchange is a large wholesale
13 horticulture company located on the shores of the
14 Pacific Ocean in San Mateo County, one of the affected
15 counties in Half Moon Bay. We are, we ship between 100
16 and several hundred thousand cartons of plants
17 nationwide every month. And we support and provide
18 livelihood for hundreds of families in our area.

19 The effect of initially the Canadian
20 Regulations that came down relative to SOD and
21 subsequently the regulations that are coming out on the
22 federal level, are indeed onerous and having a severe,
23 already having and we perceive that we will have,
24 continue to have a severe economic impact on our
25 business because they don't allow us to essentially

1 keep up with the pace of the flow of commerce as it
2 takes place every day. And more specifically, what do
3 we want?

4 Well, what we would like to see put in place
5 relative to SOD is a survey and monitor system, much
6 the same as we have now in our current business. Today
7 we have agriculture inspectors from San Mateo County
8 out at our facility daily, inspecting product, and
9 monitoring the overall health of the nursery relative
10 to all different kinds of pests. What results from
11 that is, is that and we have had this on an ongoing
12 basis for several years, of course, a clean bill of
13 health, which results in a stamp on our boxes that we
14 are a pest free, a clean nursery. And this really
15 serves as our passport to send our products nationwide.

16 We would like to see the same kind of thing
17 implemented for SOD, where rather than these onerous,
18 what we see as onerous regulations, that there can be a
19 survey and that if the nursery is deemed to be free of
20 SOD, that they would get the stamp of approval and
21 simply be able to ship. A much more simplified and
22 cost effective system where we think would also supply
23 the safeguards.

24 For example, we have already in anticipation
25 of this, we have had the San Mateo County Department of

1 Agriculture come into our nursery and not only survey
2 our entire nursery, but to survey for a quarter of mile
3 surrounding all of our properties. There is
4 absolutely, with all the testing and surveying that has
5 gone on, there is absolutely no evidence, whatsoever,
6 of the presence of SOD anywhere on any of our
7 properties. And we feel that with this kind of testing
8 and of course, follow up monitoring, if there is a
9 clean bill of health relative to SOD, we feel that we
10 should be able to have a stamp and be able to simply
11 carry on with our business. Otherwise, what you will
12 hear following, the ongoing disruption from our
13 business from the type of regulations that are proposed
14 here, are simply going to result in a great loss of
15 business as we have already seen with the, actually the
16 complete loss of business to Canada as a result of
17 their regulations.

18 Thank you.

19 MR. RHOADS: Thank you. Next we will have
20 Mark Falk also from Nurserymen's Exchange.

21 PRESENTATION BY MARK FALK:

22 MR. FALK: Hello. Don already did a real good
23 job of explaining some of the difficulties we are
24 facing at Nurserymen's Exchange. I am in charge of
25 all distribution at Nurserymen's Exchange, so I am

1 going to get into a little more of the specifics of
2 what is being asked of us.

3 As Don alluded to, we ship hundreds of
4 thousands of cases each month and millions of cases a
5 year. What is being asked of us is not just stuff
6 with our host plant Azaleas, but every single shipment
7 to be tracked by a USDA number. What that means for us
8 in a week that we are, a typical week that we are
9 sending out 200 trucks, every truck that leaves the
10 property has to have specific USDA number. Our average
11 truck has about 20 different customers on it, so, for
12 each customer we will have to make a copy of every
13 single number and track that. What it is going to end
14 up doing is we are going to have about 3,000 copies,
15 extra copies made each week and attach the packing list
16 going to every one of our customers and then we have to
17 track these 3,000 copies related to sequential USDA
18 number and back track those to every single order we
19 send out, which with 3,000 customers it is about 4,000
20 orders. So, I have to hire an extra person to do this.

21 Not only that, the way our business works, is
22 that our customers, they have a perishable product,
23 their plants, they want to fill the shelves. They want
24 to call us that day, make an order, and they want us to
25 pack it and ship it that day. Now, we have had to make

1 a cutoff at 12 noon so that we accommodate our Ag
2 inspectors and still get all this extra paperwork done,
3 so that we can even ship the stuff out. So, we are
4 already losing orders. We are going to start to lose
5 customers. Bottom line is that our costs are going up,
6 our revenue is going down, that is the type of stuff
7 that puts people out of business. And it is just a
8 logistical nightmare. It is an impossible process
9 right now.

10 And with, if we start talking about our host
11 plant, Azaleas, tomorrow we are shipping about 200
12 cases of Azaleas on five different trucks and we are
13 going to have to our Ag inspector certify all those
14 Azaleas, inspect them, and it is going to put quite an
15 onerous on the, on our local Ag department, too. I
16 don't know how they are going to handle it, because
17 they are buried going through all the inspections they
18 do already.

19 Thanks.

20 MR. RHOADS: Thank you.

21 Next we are going to have Hank Sciaroni,
22 Nurserymen's Exchange.

23 PRESENTATION BY HANK SCIARONI:

24 MR. SCIARONI: My name is Hank Sciaroni. I am
25 now with Nurserymen's Exchange. For 38 years and eight

1 months I was a farm advisor, horticulture advisor with
2 the Agriculture Extension Service in San Mateo and San
3 Francisco County. After I retired in '86, I couldn't
4 take the smile off of my face. It took me three or
5 four months to do that.

6 What I want to say to you is and I regret to
7 have to admit this to you, but last fall,
8 unfortunately, it was me that I happened to be speaking
9 with the guy up in Oregon, who wrote all this crap
10 about SOD, and laid upon us all the restrictions that
11 we now have, you know, and brought this all about.
12 Unfortunately, I sent this material, 46 pages, which he
13 faxed me, to our Agriculture Commissioner and then it
14 went to CDFA and then it went to, back to USDA, got
15 very good response there. And as the net result, not
16 only can we not ship to Canada, but we are looking at
17 something here that frankly scares the hell out of us,
18 okay. But, I think that since we are all on the same
19 team, in the same country, that we will work together.

20 If we can't get your attention, we are using our
21 Congressman and our United States Senators to make sure
22 that you are listening. But, so far you are listening
23 very good. Okay. I have to admit that, okay. But,
24 understand this, we are very persistent and we will not
25 go away. It is the livelihood of this company and the

1 people in this company who work for us. We can't quit.

2 We are going to ask you to adopt something that works
3 and then we are going to ask you to get us back into
4 Canada.

5 If you can't get us back into Canada, then I
6 want you to put reciprocal restrictions on them so that
7 they have to live with the same rules that they have
8 laid on us, okay. The identical rules. And let me
9 tell you how ridiculous it can get. We imported tissue
10 cultured orchids in flas, grow them in fir bark, okay.

11 Fir bark, okay. We cannot get them into Canada right
12 now. Cannot get them into Canada. This is how bad
13 this is as far as that country is concerned. Now,
14 they are having a real good time, because they are
15 taking all of our customers and selling cheaper than we
16 can ship in many parts of the United States. Our good
17 friends, the Canadians, okay. Good people. You have
18 to deal with this.

19 And as I started, when I started in early
20 part of this, I just wished I never found this and
21 brought it to your attention because maybe we wouldn't
22 be here today, maybe.

23 The other thing I would like to say to you,
24 that during these years I had an opportunity to work
25 with some of the best plant pathologists in the

1 University of California. Some of these pathologists
2 who you have not contacted because they are retired,
3 have indicated to me that maybe this fungus has been
4 around for a long, long time and that maybe wet
5 conditions, poor drainage brought this on. And I can
6 say this to you also, that in my experience with the
7 Pitheathous group of fungi, that is the fithopic(ph)
8 and pitheaty(ph) and I am not a pathologist but I
9 helped to get many of them promoted and wrote articles
10 with them, and some of the finest that were, that came
11 out of the University. Many of them agree that poor
12 drainage and heavy wet conditions are inducive of this
13 organism, but not ramorum, I am not speaking about that
14 one, but the other ones, that caused the problems in
15 oriental plants.

16 Also I want you to think about this also.
17 If you are thinking that chemical control may work,
18 okay, I want you to think about this again. The finest
19 chemicals that we had for the Pitheathous fungi to
20 drench around container plants, do not work any more on
21 many groups of Pitheathous fungi.

22 Furthermore, there is a heavy emphasis in EPA
23 and many regulatory agencies that we go to reduce risk
24 materials. Reduce risk means less control, more
25 applications, and you still have the problem. Okay. I

1 like the materials that are more, maybe not so reduce
2 risk, but will clean it up so you don't have to go
3 back, if you are taking care of the human element to
4 make sure that there is safety in all of that involved.

5 Right now, now I am going to speak to the
6 present restrictions that you have, that we are talking
7 about.

8 You classify everything as soil. We do not
9 use soil. We do not mine soil. When I took soils at
10 UC Davis, soil was dirt. We used and this is going to
11 make you laugh, we used -- Soil is dirt. It has
12 nothing to do with artificial mixes that we use. All
13 of artificial mixes. When the Canadian said, no, they
14 don't want to soil, fine, I am going to send the same
15 peat back to you in the mixes that we brought from you,
16 our base mix, thousands, and thousands is Canadian peat
17 moss, with perlite, and sponge rock and volcanic rock,
18 okay, or quarry rock. So, you can see, please, don't
19 say everything is soil. It is not soil. We use
20 artificial mixes.

21 Also, you have got some statements in there
22 about steam sterilization, I worked with some of the
23 finest people that did steam sterilization work. You
24 want an inspector there for when you steam sterilize
25 the soil at 180 degrees for a half hour, you can't get

1 that temperature up in 30 minutes. You can't do it,
2 unless you are in a vault. So, forget that. There are
3 other techniques. You will have to go to a book that I
4 helped to author many years ago with Dr. Kenneth Baker,
5 that tells you all about steam sterilization. And
6 unfortunately, many of the educators today have
7 forgotten this information. It is called Manual 23,
8 the UC Soil System. It is out of print, so good, that
9 it is out of print. The point is, that somebody has
10 got to go back and review the literature to see where
11 we are going on this.

12 So, I would like to make one other final
13 point to you. We look at USDA as somebody to help us
14 resolve this problem. You have heard from the other
15 people here in Nurserymen's Exchange, how difficult it
16 is with the paperwork to do this. We are going to try.
17 We are going to try. But, we want you to know, that
18 this is laid on us tremendous problems. And when we are
19 dealing with non host plants, what is the difference,
20 if they are non host and they are clean, what is the
21 difference. We are not even sure that azaleas are host
22 plants. I talked to the people at Yoda Brothers who
23 gave samples to the University people who tried to do
24 innoculate azaleas, and they were totally unsuccessful
25 in inoculating azaleas. Rhododendrons was a little

1 different point.

2 So, right now, if we had clean stock, clean
3 stock, we are unable to get back into Canada. And you
4 know we are clean. We are going to try to stay that
5 way, but we need your help in giving us something that
6 works. Ease off on the paperwork, please.

7 Thank you very much.

8 MR. RHOADS: Thank you.

9 One thing I would like to clarify, you
10 mentioned the soil treatment, 180, you mentioned the
11 soil treatment, 180 degrees for 30 minutes. It is 30
12 minute being held at 180 degrees. It is not a 30
13 degree, like start a treating it at 180 degrees and
14 having it, have that treatment last for 30 minutes.
15 That maybe the soil will get to 180 degrees over 30
16 minutes. It is holding the soil at 180 degrees for 30
17 minutes. Is that correct?

18 MR. SCIARONI: It is going to take you maybe
19 two hours even in a vault to get that temperature up.
20 And so, this is all in articles that we wrote many
21 years ago and I say to you, you can't just lay down the
22 Thomas Method of pipes perforated on top of the ground
23 and cover it. Steam does not move down, it moves up
24 the heat, okay. So, I want to warn you don't try to
25 clean it up that way. You had better think about a

1 ways of how to do this and there are these techniques
2 in the articles. But, just to stress to you, if you
3 are talking about chemical control, we are going to
4 have to revise our thinking on the kinds of fungus that
5 are going to be permitted in this country. Because
6 reduced risk does not mean good control many times.
7 Okay.

8 Here is a copy of my presentation.

9 MR. RHOADS: Thank you very much.

10 Next we are going to have Mr. Jack Olson from
11 the California Farm Bureau Federation.

12 PRESENTATION BY JACK OLSON:

13 MR. OLSON: Good Morning, Gentlemen. Jack
14 Olson, Executive Administrator, San Mateo County Farm
15 Bureau, representing both San Mateo County Farm Bureau
16 and the California Farm Bureau. And when I finish
17 their comments, I also have a letter from Congresswoman
18 Anna Eshoo, I would like to read into the record.

19 Thank you for the opportunity to offer our
20 concerns with these proposed rules.

21 (1) There is no scientific basis for
22 regulating soil associated with non host nursery stock
23 in areas that have been certified as Phytophthora
24 Ramorum free. There is no science base need to
25 regulate azaleas. These articles should be removed

1 from Section 301.92-2.

2 (2) In several counties the areas of
3 infestation are small and extremely remote. Many of
4 the agriculture operations are great distances away and
5 have natural barriers to keep them protective from
6 potential infestation. The regulation should include
7 requirements to allow us to follow the process
8 currently allowed in Oregon to limit the quarantine to
9 specific areas of the county.

10 (3) The regulation should be designed to
11 address United States concerns. As our current
12 quarantine was set up to deal with the concerns
13 expressed by Canada, we should not do so as to
14 economically damage California Agriculture and Timber
15 producers. Canada will continue to use their sanitary
16 requirements as they see fit.

17 (4) The certification requirement will create
18 a terrific financial and economic hardship for
19 agriculture producers and regulatory agencies.
20 Hundreds of thousands of agriculture products are
21 shipped from California throughout the world each day.

22 The individual paperwork required for each shipment
23 will be a logistical nightmare. There needs to be a
24 process to allow limited permits to offer a process
25 whereby an inspected operation can be allowed to ship

1 under a single permit or master certificate.

2 (5) Under the current sudden oak death
3 funding in California, a program can be developed to
4 allow for compliance agreements and limited permits.
5 However, there is a need for additional funding and
6 personnel to fully implement a program of full
7 inspection and certification of California agriculture
8 products.

9 In conclusion, both the California Farm
10 Bureau Federation and San Mateo County Farm Bureau
11 would like the opportunity to provide additional
12 written material as needed. It is our feeling that we
13 must all remain engaged to develop a program that can
14 work for all parties concerned.

15 Moving to Congresswoman Eshoo's letter.

16 ADear Secretary Veneman: Thank you for the
17 opportunity to comment on the recent regulatory action
18 by the United States Department of Agriculture relative
19 to Sudden Oak Death.

20 Phytophthora Ramorum presents a very real
21 danger, however, regulations can be hurtful if they go
22 into effect prior to consultation with those affected.

23 Sudden Oak Death has already brought staggering
24 economic impacts to growers in San Mateo County, which
25 I am proud to represent. I ask you to continue to work

1 to make sure that economic impacts to growers are taken
2 into account and minimized.

3 Most of those hurt have already taken steps
4 to ensure that their exported products pose no threat
5 of spreading Sudden Oak Death. Regulations should be
6 recognized that some areas of California are already in
7 compliance with rules meant to protect against the
8 Sudden Oak Death and that exports from these areas
9 should be allowed.

10 I ask the United States Department of
11 Agriculture to consider the implications that
12 regulations have already had and work to minimize
13 future costs and impacts to growers. I am enclosing a
14 report from the San Mateo County Agricultural
15 Commissioner that highlights the key points that many
16 of my constituents have contacted me about.

17 Every day that unfair restrictions stand,
18 local growers are being hurt. They are an important
19 part of our state's economy and our national economy,
20 so what we do and how we do it is critical. I look
21 forward to your prompt consideration of this very
22 important issue. Sincerely, Anna G. Eshoo, Member of
23 Congress.®

24 MR. RHOADS: Thank you.

25 (Pause.)

1 MR. RHOADS: Due to a minor lack of clarity in
2 terms of the number of people who actually signed up to
3 speak here. I think I have got about eight or nine
4 people. Is it possible for the people who are here,
5 who are still planning to speak, just to raise their
6 hands for me. Just trying to decide whether we need to
7 take a break or whether we are going to go straight, if
8 we are going to pass on lunch.

9 Once more, just high.

10 (Pause.)

11 MR. RHOADS: Okay. We will continue on. The
12 next person to speak is Brian Mathews.

13 PRESENTATION BY BRIAN MATHEWS:

14 MR. MATHEWS: Good morning. My name is Brian
15 Mathews. That is M-A-T-H-E-W-S. I am here
16 representing the Alameda County Waste Management
17 Authority.

18 The Alameda County Waste Management Authority
19 and Source Reduction and Recycling Board is a joint
20 powers agency representing 17 member jurisdictions
21 within Alameda County. The members include every city
22 in the county, two sanitary districts, and the County
23 Government, itself.

24 The Authority supports the efforts of the
25 State and Federal Government to slow and stop the

1 spread of the fungus, *Phytophthora Ramorum*, and thus
2 preserve the landscape of California, which provides
3 multiple benefits including habitat, air quality and
4 scenic value.

5 The Interim Rule issued by the USDA, while
6 good in its intent, will have unintended negative
7 consequences. It will prevent the movement of
8 significant quantities of uncontaminated yard and green
9 waste from Alameda County to processing facilities
10 outside the quarantined area. The loss of these
11 processing options could result in significant
12 quantities of recycled material having to be buried at
13 landfills within the county.

14 The burying of these recyclable materials
15 will be a step backward from efforts that have been
16 made in the past decade to divert these materials from
17 landfills. The burying of green waste will also result
18 in the other negative environmental impacts such as
19 increased production of green house gas methane.

20 On behalf of the Alameda County Waste
21 Management Authority, I urge the USDA to adopt
22 guidelines that allow for the movement of green waste
23 out of the quarantined areas so long as they are
24 delivered to composting facilities that can demonstrate
25 adequate pathogen reduction to render the products free

1 from Phytophthora Ramorum and its spores. This can
2 best take place in a regulated environment of permits
3 set up by the State of California.

4 We thank you for this opportunity to comment.

5 We will also submit written comments before the April
6 15 deadline. Thank you.

7 MR. RHOADS: Thank you.

8 Next we are going to have Mr. Eaven Edgar

9 PRESENTATION BY EAVEN EDGAR:

10 MR. EDGAR: Good morning. My name is Eaven
11 Edgar, Director of Regulatory Affairs with the
12 California Refuse Removal Council. And it is Edgar,
13 E-D-G-A-R.

14 The California Refuse Removal Council, the
15 trade association is haulers, composters, recycling
16 facilities and operator in Northern California. Within
17 the 10 county region, there are 25 companies that I
18 represent. And we are pretty big on this. Mr. Jones
19 highlighted that today with regards to the mandate for
20 the 50 percent. We are co founder of the California
21 Compost Quality Council, where we verify compost
22 facilities and promote permitted compost facilities in
23 California. We have franchise and contracts in order
24 to haul urban wood waste and urban yard waste to permit
25 facilities to get the 50 percent mandate. And I want

1 to find out today is that it is becoming more than a
2 urban legend. It is becoming quite a impact to AB939.

3 There was a report done by the California
4 Integrated Waste Management Board for the Year 2000.
5 Within this report in the 10 county region, there is
6 over three million cubic yards of organic made
7 material, that is produced and hauled throughout
8 Northern California. Thirty five percent of it goes
9 towards boiler fuel for the biomass energy industry.
10 Fifty percent of it is mulch. The remainder is
11 compost.

12 And with regards to the treatment methods, we
13 believe that that taken the urban wood waste to the
14 biomass energy facilities is a good treatment. And
15 that is leaving the 10 county region out to the Central
16 Valley in the Nevadas, in about an 80 to 100 mile haul
17 distance.

18 With respect to compost, we believe that the
19 permitted compost facilities by the State of
20 California, have the treatment method in order to allow
21 that to treat compost in the region and outside the
22 region. So, we would like to add to that.

23 In general, the 10 county region is producing
24 a three million cubic yards of million, the general
25 market is Central Valley. The agriculture bread basket

1 of the United States, where a lot of our product goes
2 there for mulch, compost facilities and biomass fuels.

3 Not to be repetitive, but I would like to
4 concur with the statements from Mr. Jones= today, Mr.
5 White from Waste Management, Mr. Helget from Allied
6 Waste Industry, we are all in this together, with
7 regards to fulfilling the 10 year goal of diverting
8 more than 50 percent of the solid waste from landfills
9 in California. We believe there should be some type of
10 general rule or blanket rule to have the biomass
11 facilities and compost facilities be allowed to take
12 this material outside of the region. So, basically
13 the people I represent in the California Refuge Removal
14 Council are basically small business men like Joe
15 Garbarino out Marin County, Bob Bestone out of Napa and
16 throughout Northern California. And within the
17 Executive Order 12866, quote, unquote on page 6831, it
18 says AThere is no basis to conclude that the adoption
19 of this Interim Rule could result in any significant
20 economic impact on small entities.@ On behalf of the
21 small entities of solid waste companies in California,
22 I would have to say we have massive impacts. We cannot
23 continue to use the biomass industry and composts as
24 our outlet.

25 For the cost, it is about a 15 million dollar

1 impact, a 20 million dollar impact if we were to have
2 to shut down this industry.

3 Thank you for the opportunity. We will put
4 this in writing by April 15 in order to have a comment
5 in the record.

6 Thank you.

7 MR. RHOADS: Thank you.

8 Next we are going to have Phil Aune.

9 PRESENTATION BY PHIL AUNE:

10 MR. AUNE: Hello, my name is Phil Aune.
11 A-U-N-E. I am vice president of California Forestry
12 Association. Thank you very much for inviting and
13 holding this hearing.

14 Let me digress a little bit. One of the
15 things, be a little factious, a great movie I saw one
16 time called AThe Russians Are Coming, The Russians Are
17 Coming@, Alan Arkin standing out in the street,
18 AEmergency, Emergency@, everybody to get off the
19 street. As I read the regulations I wondered what is
20 the emergency? That is known as a factious comment,
21 but also a real one. What is the emergency that all of
22 a sudden we must have a Federal quarantine?

23 Now, particularly I would like to comment
24 on a couple of items today. We will submit our
25 comments in writing. Particularly on the basis of

1 science and the rule of science. You asked, rightly
2 so, for comments on science and studies, the knowledge
3 base unfortunately is quite small. And so, and you
4 should have that. I would hope that you are not
5 expecting any new scientific studies between now and
6 April 15. That is almost impossible. The economic
7 analysis is well known. And I would encourage you very
8 much to work aggressively with the State and the
9 Federal entities to determine the economic impacts of
10 all regulations, not just the Federal quarantine, but
11 it is cumulative effect of the regulations.

12 And last but not least, I would ask you very,
13 very sincerely, to work and consider entering a
14 partnership and I will use the State of California as
15 an example, the work between California Department of
16 Food and Agriculture, the California Department of
17 Forestry, the University of California, the Forest
18 Service and all of the other agencies plus the county
19 entities in dealing with this problem is first rate.
20 The Federal Government ought to join that partnership.

21 And the question is what is not working within the
22 State of California regulations? What is not working?

23 Why do we need extensive Federal regulations when the
24 problem is hand. Now, pause and think for a second,
25 what are we doing in California? We are trying to work

1 and isolate this particular disease in the zones where
2 we actually know the infestation occurs. And we are
3 trying specifically very hard not to have that disease
4 spread outside of that zone where it is known. Does it
5 make sense as an example for it to move into Humble
6 County? No. And our rules are designed to try to
7 minimize and prevent that. And I think there is some
8 real mistakes that can be made by working and not
9 keeping the concentration at the zone of infestation.

10 So, given that, I come back to my main point
11 again. Join the partnership, and I really question,
12 what is the nature of the emergency? Maybe it is
13 political, because of the emergency in the Canadian
14 regulations. But, go back, what are we really trying
15 to do in the fundamental?

16 Last, but not least, my last comment concerns
17 something that you gentlemen can do, when you get back
18 to USDA, APHIS, there are five million dollars
19 available in the Commodity Credit Corporation,
20 immediately available for research. The Office of
21 Management and Budget has not released that money. If
22 there is an emergency, one of the things the Federal
23 Government can do, is release that money immediately
24 for the research programs. The precedent has been
25 established, and I would ask you to back and work with

1 the Undersecretary to revisit this issue that the OMB
2 has said, no, we are not going to give the funding.
3 The question is what part of no don't you understand,
4 we do not understand any part of that particular no.
5 And I ask you, will join you very much in supporting
6 release of that fund, so that we can get, can get on
7 with the research. It takes money.

8 Thank you very much.

9 MR. RHOADS: Thank you.

10 Next we are going to have Carol Umberger.

11 PRESENTATION BY CAROL UMBERGER:

12 MS. UMBERGER: My name is Carol Umberger. And
13 that is U-M-B-E-R-G-E-R.

14 I live in Southern Monterey County and we
15 have a family owned business where we grow flowers and
16 herbs and we manufacture wreaths that contain Bay
17 Laurel.

18 We have been working with our local county Ag
19 people and we have been bringing in our bay from San
20 Luis Obispo County, which is not affected. So, we
21 bring into our facility which is Monterey County, the
22 southern end and there are no affected areas around us.

23 And then we trying to be very responsible with this,
24 because we also have oak trees on our property and we
25 want to comply with everything. When I talked to the

1 county people yesterday, I was just informed of this
2 new regulation yesterday, and was told that we will no
3 longer be able to bring the product in from San Luis
4 Obispo County. We will have to not use Bay Laurel.
5 And this going to have a major impact on our business.

6
7 We employ over 100 people at a time when
8 there is very little employment going on in the Salinas
9 Valley. So, I guess I am just, I don't want to repeat
10 everything, Guinness McFadden said things regarding his
11 county that sounds like they really apply to Monterey
12 County also. So, I just want to speak for another
13 small family business. Thank you.

14 MR. RHOADS: Thank you.

15 Next we have Will Bakx.

16 PRESENTATION BY WILL BAKX:

17 MR. BAKX: Hi, my name is Will Bakx, B-A-K-X.

18 I am representing actually several entities out here.
19 California Quality Council, California Organic
20 Recycling Council, -- Company and I also serve on the
21 Management and the Biomass Committees of the California
22 Oak Morality Task Force.

23 We have, as an industry, have taken this
24 issue of sudden oak death very seriously. That is one
25 of the reasons why I am on the Task Force committees.

1 There is an agenda every month when we meet. We
2 believe there we play an important role in controlling
3 the spread of the disease and that we need to stay in
4 touch in what is going on in the industry at large,
5 what materials come in and how we can handle this here.

6 I would like to start off and we are talking
7 to USDA here right now. However, I want to point out
8 that anything that comes down here, most likely will be
9 reflected in CDFA as well. And it was pointed out by
10 Mr. Jones, it was in the slide out here, I want
11 everyone to be very aware of the fact that we should
12 not discount that. Intra or within California, there
13 may be implications of what we accept here or what goes
14 down the pipe today, maybe affected. And I want
15 everyone to be aware of that and see how that will
16 affect regulations in California.

17 As an industry, we are consumed with AB939 of
18 course, because we are in the business of diverting
19 material from the landfills to implement the 50 percent
20 waste reduction as it stands in California. To date I
21 think we are looking at about 35 percent, 40 percent of
22 total waste reduction. If this material is taken away
23 from us, through regulations, AB939 will fail. There
24 is no way we are going to make 50 percent any time soon
25 if AB939 cannot have organic waste recycling involved

1 in that.

2 Speaking from the biomass and management
3 committees off the Task Force. I think that the
4 industry at large is in agreement and the Task Force,
5 the committees have concluded that best management for
6 infected trees is to stay on site, unless there is a
7 hazard to those trees, either by a fire hazard or a
8 hazard to structural damage because trees can collapse.

9 We have seen some exciting evidence of that at times.

10 Trees can snap off or collapse upon themselves, if
11 there is a risk to structure or fire hazard, of course,
12 we have to take action on that, and take the material
13 out. But, the preference and the recommendation of the
14 committees are that you leave material affected on
15 site.

16 However, the material does come out, and just
17 put your minds on, if you had a tree on site that is
18 affected with the Phytophthora, what are you going to
19 do with that? Task Force can say leave it on site.
20 Most people say I want to get it the hell out of here.

21 Of course, you have got the spores there already, you
22 know, the disease is there, and the disease may be
23 there, you know, we don't even know where it is. But,
24 people want to get rid of it, because it is like out of
25 sight it is out of mind.

1 Where does it go? We have landfill
2 opportunities, however many facilities have a ban on
3 taking material into the landfill. Sonoma County is
4 one of them. Therefore, we have recycling facilities
5 of organic material. It would come to organic
6 recycling facilities. Now, we have material that
7 comes to our site. What are we going to do with it?
8 The alternative, of course, is like some refrigerators,
9 that most of you have seen on the side of road, you
10 know, it is like, so if you make it very impossible to
11 take it to a recycling facility, you have to pay a lot
12 of money, to take a landfill, then it is goes on the
13 side of the road. Now, does that help controlling
14 sudden oak death? I don't think so.

15 So, I am presuming that we are going to take
16 it to recycling facility, because I think that is the
17 best way of dealing with it. Either for bio fuel,
18 compost, wood waste, take that under the whole
19 umbrella. Now, how are we going to deal with this
20 here? I would urge CDFA and USDA to work with the
21 industry to come up with guidelines that will work,
22 that are workable for all parties involved. I think
23 that Mateo did some great work on defining how
24 Phytophthora Ramorum is killed in the composting
25 process. He tried in the laboratory at 131 degrees

1 Fahrenheit and he killed all the Phytophthora Ramorum
2 out there. And then he tried in the field, and with 131
3 degrees Fahrenheit, five turnings, which is required by
4 the Integrated Management Board specifically 131
5 Degrees Fahrenheit, five turnings, 15 days minimum, and
6 we set up with Mateo to do so, to work together with
7 Integrated Waste Management Board, to have things
8 streamlined and our industry is very much interested in
9 streamlining what is going on. We want to streamline.
10 He found that there was zero Phytophthora left over at
11 the end.

12 Let's also be a little bit specific about
13 Phytophthora, what is Phytophthora? It is introduced
14 species from most likely Europe. It is not an
15 engineered species. It is not a devil that came upon
16 us. We deal with all kinds of diseases that come into
17 organic recycling facilities, and our process kills the
18 disease. We have no record so far of plants that are
19 affected after they were treated with a compost. So,
20 therefore, I really like CDFA, USDA to work together
21 and make a strong effort to redesignate composted
22 material and I am talking about compost and also
23 mulches that have been treated in the five day, 15 day,
24 five turnings, 131 degree Fahrenheit as a material that
25 has been effectively treated for Phytophthora and can

1 be moved. I would like to have that in regulations.

2 If there is more work that needs to be done,
3 and I think Mateo at UC Berkeley, did a very good job
4 of the research he did, zero, zero, zero, all the way
5 down the line, in everything that he did. I think we
6 need to incorporate that in our regulations right now.

7 This is a threat to our industry. It is a threat
8 against AB939. And it is a threat to feeding the soil
9 that we are doing right now because we have a very
10 productive system going at this point, that recycles
11 material in our state, some of it goes out of state,
12 very little, but in our state, and I think we need to
13 make that a priority and be very proactive on that.

14 I would also like to address how do we
15 monitor this here, because the question has come up by
16 activists, how do we deal with now because you need to
17 know how is the compost monitored and how do we know
18 that facilities indeed meet the standards. We have
19 already a system in place. Integrated Waste Management
20 provides that system. There is the LEA, Local
21 Enforcement Agency, that needs to report on a monthly
22 basis, depending on the volume. But, any site needs
23 to have inspections if they do a certain volume. Let
24 us put in regulation that sites that do take in sudden
25 oak death, will have an X amount, say monthly

1 inspections, where it will be reviewed, if the
2 temperature turning has been complied with. That the
3 laboratory results and what we use is E-coli that have
4 functions for any other disease that we have, as an
5 indicator, that we kill disease in our composting
6 process, will be applied. That is in place.
7 Therefore, let the LEA be the automatic contact with
8 the Ag Commissioner's office, that they will send a
9 copy for that facility, that takes in sudden oak death
10 material, and as far as we know, probably every
11 facility in the whole Coast line will take that in.
12 That that copy will go to Ag Commissioner, so that is a
13 certified facility. If you want to step it up, there
14 is also the California Compost Quality Council, we do
15 independent inspections. There is a disclosure
16 requirement. We step it up a little bit. Maybe you
17 want to go that route.

18 I have different options, I think that we can
19 discuss. But, let's keep this open as a discussion and
20 let's make sure that there is a safe flow of material
21 to your responsible partner and we are the responsible
22 partner.

23 Thank you.

24 MR. RHOADS: Thank you.

25 I have a maybe sign up here, I think here,

1 Jerry, Jerry Melo.

2 PRESENTATION BY JERRY MELO:

3 MR. MELO: Thank you. My name is Jerry Melo.

4 The last name is a four letter word, M-E-L-O. And I
5 am an industrial forester from Fort Bragg. And the
6 reason I wrote maybe, sir, is because I had no idea
7 what this was really about. I would like to thank you
8 for your plain English sheet, which I had the
9 opportunity to read and also your earlier presentation.

10 And it sort of hit me behind, between the eyes that
11 affects my second job. I am the mayor of the City of
12 Fort Bragg. And I am also the, because of that, I am
13 the Chairman of the League of California Cities
14 Environmental Quality Committee. And it occurs to me
15 that it affects my real job and those other vocations.

16 So, I am going to just hit on a few high
17 points which you have heard from other people, but,
18 maybe from a little different perspective.

19 I believe you really need to listen to the
20 State agencies, the Gentleman from Food and
21 Agriculture, Mark Stanley from the Department of
22 Forestry and from Mr. Jones, the Integrated Waste
23 Management Board. And the message that I would have
24 to you is please coordinate the federal program with
25 the State agencies. Please do that. And that

1 includes the enforcement aspect of it, and also the
2 training. The local Ag commissioners need to know how
3 to enforce this thing in a consistent basis and they
4 need to be trained to do so.

5 It appears to me that one of the major
6 questions that all of you, hopefully on a cooperative
7 basis need to define, is what can be transported and
8 how can it be transported and how far can it be
9 transported? I know that your regulation has the word
10 interstate and that to me means across some political
11 division, California to Oregon or some other division.

12 But, the California regulations deal with the zone of
13 infestation or the quarantine area, call it what you
14 will, that really needs to be resolved. And I know one
15 of the things in my real job as a forester, the company
16 I work for operates one of these biomass power plants
17 in Fort Bragg, so we need to know can we bring the fuel
18 in there. A second thing is we operate a tree nursery,
19 which produces about two million Camifer trees a year,
20 for forestation purposes and we use the dirt from
21 Canada that you heard about earlier, you know, it is
22 the peat moss and all that good stuff. So, that is a
23 concern, both from a power generation and as a producer
24 of Camifer trees.

25 In my city there are several small nurseries

1 and also people who process greens. They need to have
2 a contact from our Ag commissioner, they regularly do,
3 but they need to know if they are producing
4 Rhododendrons or azaleas, or Huckleberry wreaths, those
5 sorts of things. They really need to know when they
6 are in compliance with everybody's regulations. Really
7 important for my city.

8 I would like to address also the comments
9 with respect to this AB939, Assembly Bill 939, which
10 requires reduction of amounts of material that go to
11 landfills. And it is absolutely the truth what you
12 have heard today that the production of urban wood or
13 the grinding of shrub trimmings, landscape trimmings, a
14 lot of that goes either into daily cover on landfills
15 or it is used as fuel in biomass power plants. And
16 then there is the question of the composting, which
17 most of which I suppose goes into agricultural fields.

18 It is really important, now, I can grin a little bit,
19 my city is over the 50 percent hurdle, but we are
20 trying to improve that without the ability to process
21 the green waste and what not, we will be well under the
22 requirements of state law.

23 With respect, again, let's fall back. With
24 respect to the forestry business, which is transporting
25 logs and lumber and the use of forestry machinery, I

1 honestly don't know how we can separate soil, real
2 dirt, like we all learned at UC Davis, real dirt from
3 our logs or our equipment. We work in an environment
4 that is dirty. That is where the trees grow. And that
5 happens at our sawmills, it doesn't matter where. So,
6 it is really critical that we look into the aspect of
7 what do we call dirt, and then how do we handle it.
8 And I think Dave Bengston, our count Ag commissioner
9 clearly indicated that there is much more of a risk
10 from recreation vehicles and what not that are in and
11 out of the woods and go long ways once they leave the
12 woods, then simply the forestry equipment.

13 I am sorry, I didn't know what was coming on
14 down here. I very much appreciate the information you,
15 Gentlemen, have offered to us, and I hope you will take
16 these comments to heart. Thank you.

17 MR. RHOADS: Thank you.

18 Next I have Sam Lopez. Were you planning to
19 speak?

20 PRESENTATION BY SAM LOPEZ:

21 MR. LOPEZ: Yes, my name is Sam Lopez, again
22 as I said earlier, I know we are dealing with a pretty
23 big issue here. I spent about 70 percent of my time in
24 the woods, and you know, you kind of hear that phrase
25 or you see the trees through the forest. I know it is

1 a spray disease. I see woodpeckers pecking on trees, I
2 see birds building nests, transferring the fungus
3 around. Deers running through the forest, bugs,
4 insects, water. It is going to be a long going process
5 to try to get this under control as we all understand.

6 But, one other question I wanted to ask, is
7 there a federal mandatory rule in effect that says you
8 can't transport it from state to state? Will there be
9 a fine imposed? I know there are lots of people that
10 ship wood. Loggers that move logs. Firewood cutters,
11 tree services and move from county to county that are
12 not quarantined. I would like to know if there is any
13 kind of federal rule stating the fact that it cannot be
14 moved from state to state and if so, is there a fine or
15 a jail sentence? And if all possible, it is not
16 something I want to do, but I would like to know if
17 there is some kind of rule or regulation in accordance
18 with the law that does apply to that. Thank you very
19 much.

20 MR. SMITH: Sure, I can answer to your
21 question about violations. We do have an investigatory
22 and enforcement services group, a staff, in our office
23 and they have got field staff. Any violation or
24 alleged violation is investigated. It is considered
25 and it is can either go for a civil penalty with a fine

1 and only a fine, or if it is significant enough, it is
2 offered to the district attorney and could go for
3 criminal charges, which may involve a felony count,
4 which potentially have a fine and jail term with it.
5 In other regulations we enforce, I have seen both
6 happen in the, with the absence of a jail term. But,
7 it is always on the books as a possibility if it is
8 significant enough.

9 MR. RHOADS: I have one person who is
10 registered if you don't mind waiting, we will revisit.
11 One more registered speaker, that is Stacy Carlson.

12 PRESENTATION BY STACY CARLSON:

13 MR. CARLSON: Good morning, Stacy Carlson,
14 Marin County, Agriculture Commissioner. Member of the
15 California Oak Morality Task Force Board of Directors.

16 Having been in the center of the infected
17 area and the original site and finding of the
18 Phytophthora Ramorum, and we have had several years of
19 experience of looking at this, and concerns I have had
20 have been few over the Federal Rule, in its general
21 approach. However, John Westoby, Dave Bengston, Susan
22 Cohen, Gail Robbey and Don Henry from Food and
23 Agriculture and my Agriculture Commissioner colleagues
24 have presented many or similar concerns I have.
25 However, I would like to emphasize that Marin County

1 being the epic center and recognizes the highest
2 impacted area in terms of dead trees, we do need a
3 reasonable approach to move that material, chip
4 material. Currently we ship it, we are shipping it to
5 cogeneration plants. And that would be only be
6 reasonable given other quarantines that have been
7 imposed by the Federal Government on other exotic
8 pests, not necessarily pathogens, but insects. That
9 there is a mechanism that allows for compliance
10 agreements for that material to be moved. For example,
11 Mediterranean fruit fly, even in its hype of its
12 infestations, commodities were allowed to be shipped as
13 long as there was a compliance agreement that allowed
14 for that material to moved to a specific destination
15 and handled according to standard practices if it was a
16 commodity that needed to be packed or canned. And this
17 way I don't see much difference. The ultimate goal for
18 wood chips in a cogeneration plant is incineration.
19 So, there is end product and it certainly is not
20 practical for those shipments to be diverted, given the
21 narrow economic returns on their investment in moving
22 that product around.

23 In that case, the composting and the
24 cogeneration issues is really more of a regional issue.
25 It is really not a interstate factor. So, we should

1 treat that differently than has been imposed as if it
2 was an interstate restriction. That is a significant
3 difference in how one would manage a project of this
4 nature. So, separating those two are critical.

5 Compliance agreements in the nursery industry
6 have been our standard. I think the rule specifying
7 certificates and compliance agreements confuses what we
8 considered our standard nursery inspection protocols.
9 And which once we established the conditions for a
10 nursery to operate under, that we would rely on a
11 mutual understanding with inspection and protocols and
12 specific requirements for those shipments to be allowed
13 to move under compliance agreements. It is a little
14 confusing plus as another layer of bureaucracy that is
15 not essential for the assurance of the product not
16 being moved that would cause a risk to, at its
17 destination.

18 Looking at the request for information
19 section in here, and I am not trying to be factious in
20 these comments at this point, but, you asked for
21 evidence demonstrating whether contaminated soil
22 provides a viable or likely pathway of spread, evidence
23 demonstrating whether debarked, etc., evidence
24 demonstrating whether acorn seeds and there is a list
25 there. I also would, since we have no viable

1 treatments for this, at this time, that the Oregon
2 situation, I think there should be evidence established
3 that they, too, can commit that their eradication
4 project will be successful. I think that falls in the
5 same category that maybe, at least, let them recognize
6 what evidence they have, so I can have assurance that
7 their nine square mile is going to protect other areas
8 of California or other areas of the United States,
9 equivalently to the restrictions placed on the 10
10 county are of California.

11 I think the eradication is premature to
12 determine if you can eradicate *Phytophthora Ramorum*,
13 and by giving them an exemption for disallowing
14 restrictions of a nine square mile area, is not what I
15 would consider fair and equitable exchange to our
16 restrictions.

17 Now, if we had sample of areas and do surveys
18 in our, in some of our counties that have isolated
19 finds, I think they should be equally treated and allow
20 for those small locations where we have one, two or
21 three trees found in a county, in which the whole
22 county becomes regulated. I think with some survey,
23 considerations or provisions should be in the rule that
24 would allow for isolating those areas in those counties
25 that have minor detected areas, for example, Mendocino,

1 isolated area, Santa Clara, isolated areas, San Mateo,
2 somewhat isolated areas, and they are highly impacted
3 by this, so there should be some reciprocal
4 consideration for that.

5 The costs, I know it has been brought up, but
6 I want to emphasize that this, the implementation of
7 these restrictions are expensive. I know that there
8 has been movement from Federal legislation and state
9 legislation to fund these programs, but, I want to
10 emphasize that all these requirements are expensive
11 from a regulatory standpoint, not only on the, from the
12 regulatory standpoint, but on the impacted parties.
13 And I just want to recognize that I don't, I haven't
14 really heard much said about that consideration to be
15 given.

16 I think I will stop there. The comments
17 about the inspection procedures have been mentioned by
18 Don Henry and etc. And I concur with their comments.
19 Thank you.

20 MR. MATHEWS: The gentleman that just left,
21 not this gentleman, but the one in the red jacket
22 brought up a very interesting question that I would
23 like to address. My name is Brian Mathews, again with
24 the Alameda County Waste Management Authority. And
25 right now we have one jurisdiction as well as the

1 company waste management in Alameda County that ships
2 their material, green waste material from restricted
3 area, if you will, Alameda County to outside the county
4 and to a composting facility. And so, the question I
5 have is are they in violation right now of the Federal
6 Interim Rule? And what are the consequences of that
7 for them? And particularly I want to emphasize the
8 terminology of Duff. Duff doesn't appear anywhere under
9 restricted or unrestricted materials, unless it
10 contains azaleas, rhododendrons, things like that. We
11 know that the contamination is evident or at the
12 University of California Berkeley Campus, the
13 researchers there have identified it on, on site. That
14 material is transported to the Berkeley Transfer
15 Station, the Berkeley Transfer Station takes that
16 material to a green waste composting facility and so
17 the question is, are they in violation right now of
18 your rule and what are the consequences of that?

19 MR. SMITH: Movement outside the regulated
20 area of regulated articles is a technical violation.
21 Consequences, I can't, unless an investigation is done,
22 and it is pursued, I can't tell you what the
23 consequences are.

24 MR. MATHEWS: Well, so practically then, how
25 do we manage this large quantities of material?

1 MR. SMITH: That is a fair question and one I
2 can get a little closer to. I am meeting tomorrow with
3 CDFA and hopefully CDF, I don't know. No? Okay. CDFA
4 tomorrow talk about trying to nail down these specifics
5 of the regulation, how this is going to work, how are
6 they going to do this, some of these questions that
7 come up, obviously, have been a real eye opener for us
8 because we don't know the, a lot of the individual
9 issues out here, had no way of knowing or really
10 finding out the individual issues that have come forth
11 here. And hope to enter a dialogue with CDFA and other
12 entities, CDF, Park and Recreation, CIWNB, to come to
13 terms with them and address them within the scope of
14 the regulations. And down the road, if we need to make
15 adjustments that, to the regulations, put that in the
16 works.

17 MR. MATHEWS: So, at this time I could go back
18 to our member jurisdiction and say, yes, this is a
19 technical violation, but there is no enforcement action
20 intended at this time until the things kind of get a
21 little more clearer.

22 MR. SMITH: I can't say that, I say contact
23 your regulatory authority in your county for guidance.
24 It is an evasive answer, I am sorry, but I am not
25 going on record saying that, no, you don't have to meet

1 the regulations.

2 MR. RHOADS: There are no more registered
3 speakers. So, you are welcome.

4 PRESENTATION BY JOHN AGUIRRE:

5 MR. AGUIRRE: My name is John Aguirre, I am
6 Executive Director for the Oregon Association of
7 Nurserymen. I appreciate the opportunity to be here.

8 We represent 1400 members and represent a 650
9 million dollar nursery and greenhouse industry in the
10 State of Oregon. Over 75 percent of our product is
11 shipped out of state, so we are keenly interested in
12 the acceptability of that product by consumers outside
13 of Oregon. In January 2001, the Oregon Department of
14 Agriculture imposed a quarantine because of, a state
15 quarantine, given our concern with the situation in
16 California. And as you know the Canadians imposed a
17 quarantine this past fall, October 2001, the effect of
18 the Canadian quarantine were to remain in effect, would
19 have been to displace up to 20 million dollars worth of
20 product.

21 Now, many of my citizens, fellow citizens in
22 Oregon, would like to throw up a barrier between Oregon
23 and California. We certainly don't adhere to that
24 view, but we do want an effective barrier with respect
25 to sudden oak death. And so, I urge the Federal

1 Quarantine be both strong and effective and not dumb
2 down data to protect themselves. We can't disarm our
3 Oregon Department of Agriculture quarantine, and that
4 is a concern that I have, because we are very
5 optimistic about the eradication efforts that we have
6 launched in Oregon in Curry County with 39.6 acres that
7 affected. We have launched an effort to cut, pile and
8 burn that affected material. So, our goal is to
9 prevent the artificial spread of sudden oak death.
10 However, as operating nurseries, we are extremely
11 sympathetic with the situation being experienced here
12 in California and we are very fearful about the
13 inevitable natural progression of this disease
14 northward. Consequently, we do have an interest in
15 making certain that a federal quarantine will allow
16 commercial nurseries to continue operating and that it
17 is sufficiently refined so that the quarantined areas
18 and regulated articles aren't unnecessarily broad.

19 I want to make just a couple of specific
20 comments with respect to the regulations. As I
21 understand the proposed Interim Rule final regulation,
22 in 301.92-2, paragraph three, inspectors can in effect
23 consider adding additional regulated articles and
24 restrict the movement of those regulated articles. And
25 I think that is intended to take into account the

1 rapidly developing science on this issue and new host,
2 plant materials that are identified. But, that whole
3 process is somewhat murky to me and is moving so fast,
4 that I would urge that USDA consider very, very
5 carefully what sort of authority is devolved or left in
6 the hand of inspectors at ground level, to make those
7 kinds of decisions. We certainly saw stories about the
8 redwood, the Canadians implicated the entire genus of
9 ACER, which is a very important ornamental plant, so,
10 we are very concerned about concerned about what new
11 plant species are added to this list. And how, what
12 science underlies that addition.

13 Also in the Interim Rule final regulation, in
14 two areas, there is discussion of the possible movement
15 of restricted plant material provided a nursery is
16 found free of Phytophthora Ramorum. And I would urge
17 the Department of Agriculture to consider that there
18 may be native host plant material in or adjacent to
19 nurseries, which could or maybe infected. And so, it
20 wasn't clear to me in reading that part of the Interim
21 Rule final regulation, whether you took into account
22 the presence of native host plant material that may not
23 be closely watched, even though an inspector finds the
24 nursery stock to be free of Phytophthora Ramorum.

25 And then finally I would just also add, the

1 issue of compliance agreements have been brought up
2 several times, given as I understand the subtle effect
3 of Phytophthora Ramorum in some plants species that are
4 commercially significant for nurseries, I think it
5 would be difficult at the present time, at least in
6 Oregon, for nursery operators to be able to effectively
7 identify plant material that was affected, but may have
8 symptoms that mimic other forms of Phytophthora or
9 perhaps or even asymptomatic. And again, we want a
10 strong and effective quarantine. We can't afford to
11 have this product moved into Oregon and we can't afford
12 our customers to believe that we may in turn be moving
13 product out of Oregon into their states. So, I would
14 urge very, very careful deliberation on the issue of
15 compliance agreements and whether you make that
16 available to the nursery industry or not.

17 Thank you very much.

18 My last name is spelled A-G-U-I-R-R-E.

19 MR. RHOADS: Sure.

20 MR. JONES: You made a comment that --
21 (inaudible)

22 MR. RHOADS: You need to be, excuse me, you
23 need on the mike, I am sorry, so we can capture it,
24 otherwise, this man can't do his job.

25 (Pause.)

1 MR. JONES: Steve Jones. Comments besides
2 the dumbing down of the regs to with California, you
3 said your nursery product may be free. But, that the
4 residual material that may be outside of that, may be
5 infected. Is that the material that we are talking
6 about, that needs to be treated through composting?

7 MR. AGUIRRE: I didn't recall making that
8 remark, and if I said that, then that is not what I
9 intended to say.

10 MR. JONES: You had talked, you had mentioned
11 in the last comment, that is what I heard, because I
12 wanted to get it straight for me, that your product you
13 sell would be okay, but there may be like the
14 strippings and things like that were on the site, that
15 may be affected.

16 MR. AGUIRRE: Oh, okay, I made a comment that
17 if a nursery in a quarantined area under the regulation
18 that I understand could be inspected and found free of
19 Phytophthora Ramorum, restricted material could be
20 shipped.

21 MR. JONES: Through your product.

22 MR. AGUIRRE: And I am urging USDA to take
23 into account the possible presence of native host plant
24 material in or adjacent to that nursery that ought to
25 be looked at, before the nursery is to permitted to

1 ship product. So, nothing to do with --

2 MR. JONES: Okay. So, that is what, it sounded
3 like it was the residual material and that is where the
4 treatment through composting would eradicate.

5 MR. AGUIRRE: No, and the issues brought up
6 about composting are important to us because we believe
7 that composting would be effective in controlling the
8 fungus.

9 MR. RHOADS: Thank you. Are there any other
10 persons who would like to speak?

11 (Pause.)

12 MR. RHOADS: Okay. Then we would like to thank
13 you all for coming. We really do appreciate all the
14 information you have provided. We are going to take
15 all of your comments under close consideration and keep
16 an eye on our website for further updates of the
17 frequently asked questions. At this time the hearing
18 is concluded. Thank you.

19 (Whereupon, at 12:37 p.m., the hearing was
20 concluded.)